

(22,245)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 93.

TEXAS & NEW ORLEANS RAILROAD COMPANY, TEX-
ARKANA & FORT SMITH RAILWAY COMPANY, AND
UNITED STATES FIDELITY & GUARANTY COMPANY,
PLAINTIFFS IN ERROR,

vs.

SABINE TRAM COMPANY.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FIRST
SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

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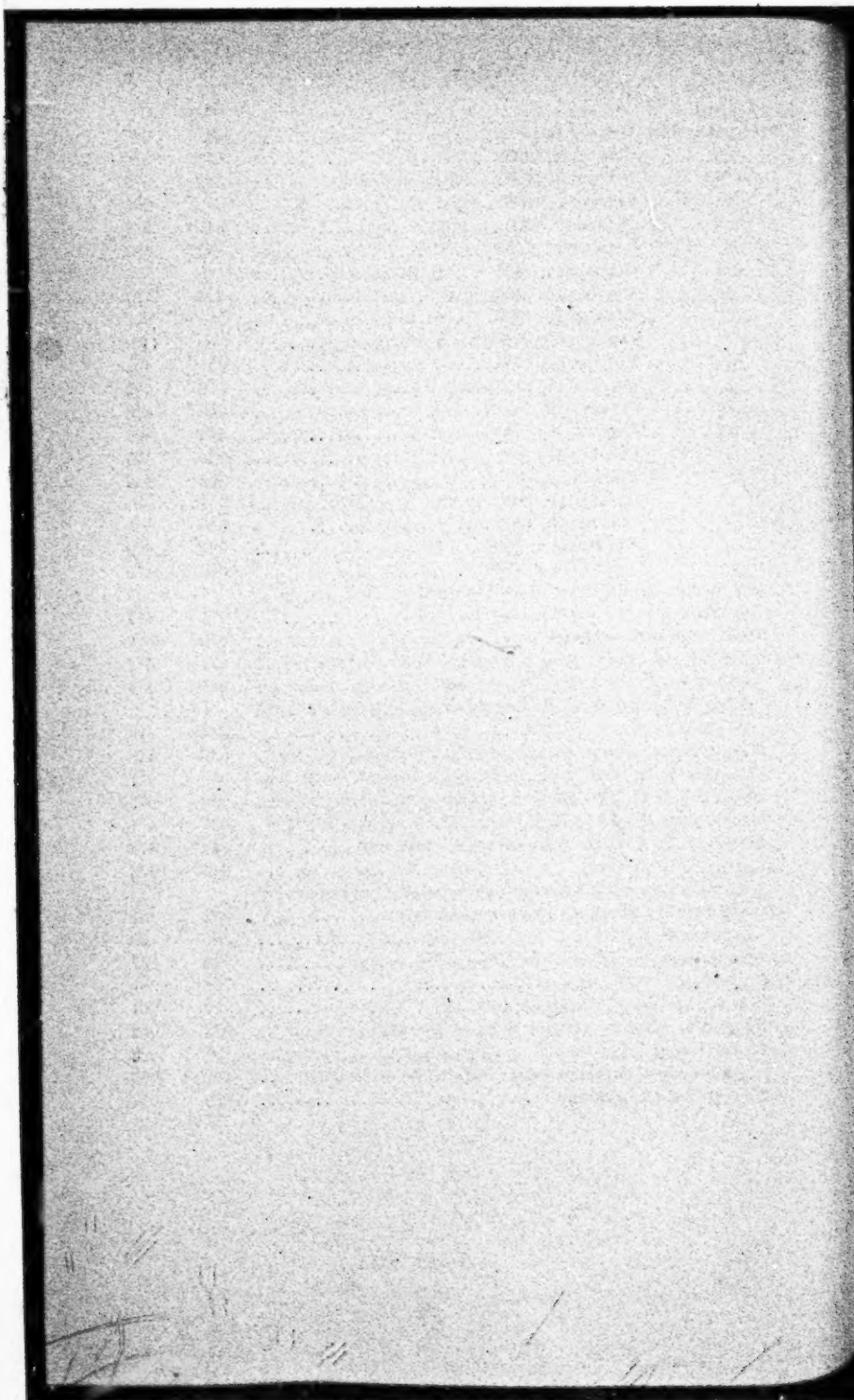
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1 In Court of Civil Appeals, First Supreme Judicial District of
the State of Texas, at Galveston, Texas.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Appellants,
vs.
SABINE TRAM COMPANY, Appellee.

Be it remembered that at a regular term of the Honorable Court of Civil Appeals of the First Supreme Judicial District of the State of Texas at Galveston, Texas, begun and holden at Galveston, Texas, on the 7th day of October, A. D. 1907, and ending on the 1st day of July, A. D., 1908, and at a term of the said Honorable Court of Civil Appeals, begun and holden at said Galveston, Texas, on the 5th day of October, A. D. 1908, and ending on the 30th day of June, A. D. 1909, and at a term of said Honorable Court of Civil Appeals begun and holden at said Galveston, Texas, on the 4th day of October, A. D. 1909, and still in session, the following proceedings were had and the following papers were filed on the dates respectively indicated in the cause, styled and numbered, in said Court of Civil Appeals, as follows:

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Appellants,
vs.
SABINE TRAM COMPANY, Appellee.

2 *Order Setting Cause for Submission.*

JANUARY 21, 1909.

4920.

T. & N. O. Ry. Co.
vs.
SABINE TRAM CO.

From Jefferson.

Set for submission on February 4, 1909.

Agreement to Postpone to Feb. 11, 1909.

FEBRUARY 3, 1909.

4920.

T. & N. O. R. R. Co.
vs.
SABINE TRAM CO.

From Jefferson.

Agreed motion to postpone submission to Feb. 11, 1909, submitted
and granted.

Joint Motion to Postpone Submission to Feb. 18, 1909.

FEBRUARY 10, 1909.

4920.

T. & N. O. R. R. Co.

VS.

SABINE TRAM CO.

From Jefferson.

Joint motion to postpone to Feb. 18, 1909, submitted and granted.

Order of Submission.

FEBRUARY 18, 1909.

4920.

T. & N. O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson.

Submitted on briefs and oral argument for both parties.

Judgment of Court of Civil Appeals.

THURSDAY, May 27, 1909.

No. 4920.

T. & N. O. R. R. Co.

VS.

SABINE TRAM CO.

Appeal from the District Court of Jefferson County.

Opinion Delivered by Associate Justice Reese.

This cause came on to be heard on the transcript of the record and the same being inspected, because it is the opinion of this court that there was no error in part of the judgment it is therefore considered, adjudged and ordered that the judgment of the court below for \$1,902.43, representing overcharges and interest, be in all things affirmed; and because there was error in a part of the judgment, as pointed out in Appellee's cross-assignment of errors, it is considered, adjudged and ordered that the judgment of the court below as to penalties be reversed, and this court proceeding to render such judg-

ment as should have been rendered by the court below, it is ordered, adjudged and decreed that the Appellee, Sabine Tram Company, recover of the Appellants, Texas & New Orleans Railroad Company and Texarkana and Fort Smith Railway Company, the sum of three thousand (\$3,000.00) dollars, representing the penalties as prayed for.

It is further ordered that the sum of \$1,902.43 representing overcharges and interest, bear interest at the rate of six per cent per annum from the 24th day of January, 1908, the date of the judgment of the court below. It is further ordered that the sum of three thousand (\$3,000.00) dollars, representing penalties, bear no interest.

It is further ordered that the appellee, Sabine Tram Company, recover of said appellants, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company and their surety, United States Fidelity & Guaranty Company, four thousand, nine hundred two (\$4,902.43) 43/100 dollars; being the sum total adjudged for overcharges and penalties, and all costs in this cause incurred; and this decision be certified below for observance.

Main Opinion Ct. Civ. Appeals.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Appellants,
vs.
SABINE TRAM COMPANY, Appellee.

Appeal from the District Court of Jefferson County.

This is a suit instituted by the Sabine Tram Company, a lumber manufacturing corporation, against the Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company to recover excessive freight charges on shipments of lumber by plaintiff, over the lines of railway of defendants and in addition statutory penalties for such overcharges.

It was alleged in the petition that at various times from September 1 to November 1, 1907, plaintiff, the Sabine Tram Company, shipped from Ruliff, Texas, a station on the line of the Texarkana & Fort Smith Railway Company, to Sabine, Texas, on the line of the Texas & New Orleans Railroad Company, over the lines of said roads, certain car-loads of lumber consigned to the said Sabine Tram Company, "Notify W. A. Powell, Company"; that the lumber was received by the Texarkana & Fort Smith Railway Company and by it carried to Beaumont, Texas, at which point it was turned to the connecting carrier, the Texas & New Orleans Railroad Company, and by it carried to destination at Sabine, Texas, and there delivered to plaintiff's order. It was alleged that the rate of freight established by the Railroad Commission of Texas for the carriage of said lumber was, from Ruliff to Beaumont, four cents per hundred pounds, and

from Beaumont to Sabine two and one-half cents per hundred pounds, the rate so established being from Ruliff to Sabine, the sum of such two rates, or six and one-half cents per hundred pounds. That the Texas & New Orleans Railroad Company, the terminal carrier, on the arrival of said lumber at Sabine demanded for
6 itself and the Texarkana & Fort Smith Company, acting for the latter company as well as for itself, fifteen cents per hundred pounds, which was paid by plaintiff under protest. The over-charge sought to be recovered was alleged to be \$1,788.33, and in addition plaintiff sought to recover the maximum penalty of \$500.00 provided by statute upon each car-load of said lumber.

Defendant set up by way of defense that the carriage of the lumber from Ruliff to Sabine was in the way of transportation of the same to points beyond the limits of the United States, of foreign shipments, and the same came under the provisions of the Interstate Commerce Laws of the United States, and was not subject to the rates prescribed by the Texas Railway Commission, or the laws of Texas, and further that the fifteen cents per hundred pounds charged and collected as freight was the proper freight charge in accordance with schedule of freight charges filed by said Railroad Companies respectively with the Interstate Commerce Commission, to which said shipments were subject. Other matters were set up by way of defense which need not be here specifically set out.

The substantial defense of defendants is that the shipment from Ruliff to Sabine was a foreign shipment, within the purview of the constitution and laws of the United States.

The trial court instructed the jury that the shipments of lumber in question were subject to the freight rates prescribed by the Railroad Commission of Texas, and that plaintiffs were entitled to recover the excessive charges as claimed. As to the penalties sued for, the jury was instructed that plaintiff was entitled to recover under the statute for five separate penalties of not less than \$125.00 nor more than \$500.00 each, that is, that it was entitled to recover in penalties not less than \$625.00 nor more than \$2,500.00 in the discretion of the jury.

Under this charge the jury returned a verdict for plaintiff against both defendants jointly for \$1,788.33 over-charge of freight,
7 and \$1,785.00 penalties, upon which judgment was rendered. From the judgment, their motion for a new trial having been overruled, defendants prosecute this appeal.

There seems to be no dispute as to the material facts with the single exception of the amount of the Texas commission rate applicable to the shipments if they be subject to such rate. The evidence establishes the following facts.

At the date of the transactions in question the Sabine Tram Company was engaged in the manufacture of lumber at its mill at Ruliff, a station in Texas on the line of the Texarkana & Fort Smith Railway Company. W. A. Powell Company, Limited, was engaged in buying lumber for export to different points in Europe, through the ports of Sabine and Port Arthur, both in the State of Texas. On August 28, 1906, having made sales to customers for future delivery

in Europe of large amounts of heavy pine lumber, for the carriage of which steamships had in part already been chartered, to fill such contracts, W. A. Powell Co. bought of the Sabine Tram Company 500,000 feet of heavy pine lumber of certain dimensions, to be delivered during the months of September and October. The contract provided for delivery either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas, at the option of the seller. The seller exercised the option to deliver at Sabine, a station on the line of the Texas & New Orleans Railway. During the months of September and October the lumber purchased was delivered to the Texarkana & Fort Smith Railroad at Ruliff to be by it transported to Beaumont, the terminus of its line, and thence by connecting carrier, the Texas & New Orleans Railway, to Sabine and delivery to the Sabine Tram Company. There were 24 several shipments of the lumber on as many different days, the shipments embracing 33 cars, for which 30 separate bills of lading were executed by the Texarkana & Fort Smith road, for delivery at Sabine to the Sabine Tram Company, "Notify W. A. Powell Company, Limited." No other contract or arrangement was

made by the Sabine Tram Company for the carriage of the lumber except that evidenced by the bills of lading aforesaid.

Way-bills accompanied the shipments upon which were marked in pencil "for export," but the Sabine Tram Company had no connection with, or knowledge of, the making of these way-bills, which was the act of the railway company alone. According to the course of dealing between the parties these bills of lading were endorsed by the Tram Company and sent through a bank to W. A. Powell Company, Limited, at New Orleans, La., attached to a draft for the price of the lumber, which being paid, the bills were delivered to Powell Company and by them transmitted to their agent Flanagan, at Sabine. In case of most of the shipments in question the bills of lading reached Flanagan at Sabine before the arrival of the lumber for which they were given. The lumber was carried under the shipping contracts or bills of lading aforesaid, by the Texarkana & Fort Smith road to Beaumont, and there delivered to the Texas & New Orleans road, by which it was carried to Sabine. Upon arrival at the station of Sabine it was, by direction of the agent of Powell Company carried without delay about a quarter of a mile beyond the station to the dock, where the lumber was to be unloaded. The lumber was unloaded from the cars into water of the slip in reach of ship's tackle, ready for loading onto ships. The Sabine Tram Company had no connection with this further carriage or switching of the lumber to the docks after its arrival at the station of Sabine, but this was done solely at the instance and under the direction of the agent of Powell Company. The transportation from Ruliff to Sabine was entirely within the State of Texas.

The rate established by the Railroad Commission of Texas for transportation of lumber from Ruliff to Beaumont was four cents per hundred pounds and from Beaumont to Sabine was two and one-half cents per hundred pounds, and by order regularly made by the said Commission it was provided that the through rate should not be more than the sum of the locals, under which order the through rate de-

9 mandable from Ruliff to Sabine was six and one-half cents per hundred pounds, the orders of said Commission further providing for a switching charge of \$1.50 per car from Sabine station to the docks. According to a schedule of freight tariffs filed by the Texarkana & Fort Smith Railway Company with the Interstate Commerce Commission, the freight charge on lumber for interstate or foreign transportation from Ruliff to Beaumont was ten cents per hundred pounds, and according to like schedule or freight tariffs filed by the Texas & New Orleans Railroad Company with the Interstate Commerce Commission from Beaumont to Sabine was five cents per hundred pounds. When these tariffs were so filed is immaterial, except upon the issue of good faith on the part of defendants, as the plaintiff in no event, regardless of the interstate rate, would not be entitled to recover in this suit if the Texas Commission rate was not applicable, which would only be the case if the shipment be regarded as an intra-state, and not a foreign or interstate shipment; which is the fundamental issue. We find, however, that the rate under the Act of Congress relating thereto, from Ruliff to Sabine was fifteen cents per hundred pounds.

When the lumber had been switched to the docks, W. A. Powell Company, through their agent, presented the bills of lading, and demanded the lumber, offering to pay the freight charges which according to the course of dealing between the parties they were to pay for the Sabine Tram Company, who owed the same and which it was to repay to Powell Company. The Texas & New Orleans Company, acting for itself and the Texarkana & Fort Smith Company, demanded the interstate Commission rate of fifteen cents per hundred pounds, having been previously instructed by the Texarkana & Fort Smith Company that ten cents per hundred pounds was its rate from Ruliff to Beaumont. This Powell Company, under instructions of the Sabine Tram Company, at first refused to pay, but after communicating with the Tram Company, finally paid the freight at this rate under protest, in order to get possession of the lumber.

10 For switching from Sabine to the docks, the rules and orders of the Texas Railroad Commission would allow a switching charge of \$1.50 per car on domestic shipments, and if foreign or interstate shipments, the Interstate Commerce Commission tariffs would allow a switching charge of \$2.50 per car, had not the charge for this service been absorbed in the 15 cent rate established aforesaid.

Upon shipments of freight not for export, only 48 hours free time was allowed for unloading cars, after which demurrage was charged, and if not removed from railroad premises when unloaded, a storage charge was made in addition. No such charge was made upon any of the lumber involved in this suit.

11 W. A. Powell Company, Limited, regarded the shipments in controversy as export shipments, and demanded, expected, and received, the use of terminal facilities, additional free time and other privileges accorded to shippers of export freight under export tariffs.

The railway company knew, when the freight charges were col-

lected, that the lumber was to be placed in its slips and exported to Europe on incoming ships and the freight was believed by the officers and agents of the railroad company at the time the charges were collected to constitute foreign commerce and to both permit and require the application of the rate fixed by the tariff on file with the Interstate Commerce Commission, and this rate was applied.

All the lumber in question was in fact unloaded from the cars by W. A. Powell Company, Limited, into the Texas & New Orleans Railroad Company's slips, or upon its docks, in reach of ships' tackle and loaded into the ships previously chartered for the purpose by W. A. Powell Company, Limited, which steamships carried same thence direct to Europe, where this lumber was applied upon contracts for sale in Europe made before the lumber began to leave Ruliff, and made in fact before the lumber was purchased from the Sabine Tram Company, and before it was sawed, and before the logs from which it was sawed left the State of Louisiana for the Sabine Tram Company's mill at Ruliff, in the State of Texas.

One of the ships actually waited at the docks at Sabine for the arrival of part of this lumber which constituted a portion of its cargo.

The ship which carried the last of this lumber from Sabine to Europe was chartered by W. A. Powell Company, Limited, for this purpose after these lumber shipments began to arrive at Sabine, but before all of the shipments had left Ruliff.

None of this lumber remained in the slip at Sabine, or on the docks, except for the time necessary to await the arrival of the particular ship which had previously been chartered for the purpose and designated by W. A. Powell Company as the ship which was to carry that particular lumber from the port of Sabine to Europe.

Any shipment of lumber intended for export to Europe, and in fact shipped from any point in Texas, to and through Sabine as its port of transshipment, could be contracted for, billed to and from Sabine, shipped, transported and handled in every particular just as was this lumber.

W. A. Powell Company, Limited, before this lumber began to arrive at Sabine, took out a blanket policy of insurance, protecting same against loss, from the time this lumber should come into the possession of W. A. Powell Company, Limited, at Sabine until its final delivery by W. A. Powell Company, Limited, in European ports.

At the time this lumber was shipped it was destined by Powell Company for export to some foreign port, but the particular destination of any particular portion of the lumber was not fixed, although the destination of all of the lumber to certain foreign ports was known and fixed. The Sabine Tram Company had no concern with the destination of the lumber after it came into the hands of Powell Company, and had no particular knowledge thereof. It supposed

from the fact that it was known that Powell Company were exporters of lumber, from the character of lumber which was such as was intended for export, from the fact that Sabine

was an important place at which very little lumber was used, and from other facts and circumstances, known to millmen generally, that the lumber was intended for export, but gave that matter no concern, being only concerned with the delivery of the lumber to Powell Company at Sabine station, and paying the freight thereon. What was done by the Texas & New Orleans Railroad Company after the arrival of the lumber at Sabine, in the way of switching to the docks, allowance of certain privileges allowed only to export freight, was done at the instance and for the benefit of Powell Company, with which the Tram Company had no concern.

The difference between the amount demanded and received by the Texas & New Orleans Railroad Company for itself and the Texarkana & Fort Smith Railway Company, and the Texas Commission rate was, as found by the jury, \$1788.33. As stated before, there were 33 cars of the lumber for which 30 separate bills of lading were executed, some of the timbers requiring, on account of their length, two cars, which accounts for the difference between the number of cars and the number of the bills of lading. The shipments were made at 24 different times, that is, on 24 different days. The agent of the Texas & New Orleans Railroad Company at Sabine did not make separate demands upon each expense bill, but allowed them to accumulate, in which way it occurred that only five separate demands for freight were made at different dates, the five demands covering the entire freight. From this the trial court arrived at the conclusion that the defendants had incurred liability for five separate statutory penalties, of not less than \$125.00 and not more than \$500.00, that is, not less than \$625.00 and not more than \$2500.00, which was the sole issue submitted to the jury.

Upon the freight bills was a charge for wharfage against the Tram Company which was paid by Powell Company as a proper charge against them and not against the Tram Company. Export 13 freight was entitled to seven days' free time for unloading, and 30 days' free storage on the docks, or in the slips, which privileges were availed of by Powell Company in handling this lumber.

The freight bills were made out against the Sabine Tram Company and defendants knew that Powell Company were paying the freight for the Tram Company.

The defendants, in charging the export rate, acted under the advice of their attorneys, that the facts constituted the lumber an export shipment and subjected it to the Interstate Commerce Commission rate.

While there are other incidental questions presented, the fundamental question involved in this appeal is whether the shipment of the lumber was a transaction falling under the definition of foreign commerce. If it was, then under the express provisions of the act establishing the Railroad Commission of Texas and prescribing its duties and authority, neither the rate fixed by such commission nor the provisions of the statute, upon which alone the claim of plaintiff rests have any application and its suit must fail. (Art. 4280-1).

Without pretending to discuss seriatim the several assignments of error and the propositions thereunder, we will dispose of the several questions which are therein presented.

In the view we take of the opinion of the Supreme Court of this state in the case of C. G. & S. F. Ry. Co. vs. The State of Texas (99 T. R. 274) and of the Supreme Court of the United States in the same case (204 U. S. 403) in their application to the question here involved, we are relieved of the necessity of a discussion of other cases either of our own Supreme Court or of the United States Supreme Court; the ultimate authority in the decision of such questions; upon the question involved, as it is presented by the record.

Nor are we concerned with what may appear to be a conflict
14 between the views there expressed and earlier decisions of either of said courts. We would feel compelled, in fact, to follow the decisions of our own Supreme Court unless such decision had been overruled by some later decision of the tribunal of last resort in such cases, upon the point involved. Inasmuch, however, as the Federal Supreme Court fully approved the decision of the Supreme Court of Texas in the case cited, and as we have been referred to no later decision by the Federal Supreme Court, which, in our judgment, tends to impeach the doctrine there laid down, it only remains to determine whether, upon the facts of the case of G. C. & S. F. Ry. Co. vs. The State, *supra*, the rule of decision there announced is applicable to the facts of the present case.

The question in that case was whether the movement of the two cars of grain from Texarkana in Texas to Goldthwaite, another point in Texas, was such a part of a continuous movement from Hudson, South Dakota, or more properly from Kansas City, Missouri, as to constitute the former shipment an interstate shipment. If the grain had been bought by the Hardin Grain Company of the Harroun Commission Company at Goldthwaite, for delivery to the Hardin Company at Texarkana, the latter intending the grain for its purchaser at Kansas City, and immediately upon its delivery to them continuing the shipment to Kansas City, with only such interruption as would be necessary to transfer the grain to another carrier, for transportation under a new and different contract of shipment or bill of lading, to its customer at Kansas City, there would be an exact parallel between the facts of that case and of this. That it made no difference, in determining whether the movement between Texarkana to Goldthwaite was an interstate movement, whether it was from Kansas City to Texarkana, an interstate movement, thence to Goldthwaite in the same state, or from Goldthwaite to Texarkana, both in Texas, thence to Kansas City, outside of the state, is shown by the following quotation from the opinion of the Supreme Court of the United States in the cited case:

15 "The question may be looked at from another point of view. Supposing a carload of goods was shipped from Goldthwaite to Texarkana under a bill of lading calling for only that transportation, and supposing that the laws of Texas required, subject to penalty, that such goods should be carried in a par-

ticular kind of car, can there be any doubt that the carrier would be subject to the penalty, although it should appear that the shipper intended after the goods had reached Texarkana to forward them to some other place outside the State? To state the question in other words, if the only contract of shipment was for local transportation, would the state law in respect to the mode of transportation be set one side by a Federal law in respect to interstate transportation on the ground that the shipper intended after the one contract of shipment had been completed to forward the goods to some place outside the State? *Coe v. Errol*, 116 U. S. 517."

It will be noticed that the court puts the case of the owner and shipper himself shipping the goods upon a bill of lading calling for transportation from one point to another in the same state, intending himself to forward them from such point to some point without the state, in this respect going further, probably than the Supreme Court of Texas. The case is very much stronger here against the view that the movement to Sabine was a foreign shipment, in that the further movement of the lumber after reaching Sabine was a matter with which the shipper, the Sabine Tram Company, had nothing whatever to do, and which was never, at any time, in its mind, except as a surmise or general idea that Powell Company intended the lumber for foreign shipment, after delivery to them, and after it became their property, upon payment for the same and delivery of the bills of lading. We make no excuse for the following extended quotation from the opinion of Justice Brewer, speaking for the United States Supreme Court in the Santa Fe Railway Company case, as what is said is so apt in its application to the facts of the present case.

16 "It is undoubtedly true that the character of a shipment whether local or interstate, is not changed by a transfer of title during the transportation. But whether it be one or the other may depend on the contract of shipment. The rights and obligations of carriers and shippers are reciprocal. The first contract of shipment in this case was from Hudson to Texarkana. During that transportation a contract was made at Kansas City for the sale of the corn, but that did not affect the character of the shipment from Hudson to Texarkana. It was an interstate shipment after the contract of sale as well as before. In other words, the transportation which was contracted for, and which was not changed by any act of the parties, was transportation of the corn from Hudson to Texarkana—that is, an interstate shipment. The control over goods in process of transportation which may be repeatedly changed by sales, is one thing; the transportation is another thing, and follows the contract of shipment, until that is changed by the agreement of owner and carrier. Neither the Harroun nor the Hardin company changed or offered to change the contract of shipment, or the place of delivery. The Hardin company accepted the contract of shipment theretofore made and purchased the corn to be delivered at Texarkana—that is, on the completion of the existing contract. When the Harding Company accepted the corn at Texarkana the transportation contracted for ended. The carrier was under no obli-

tations to carry it further. It transferred the corn, in obedience to the demands of the owner, to the Texas and Pacific Railway Company, to be delivered by it, under its contract with such owner. Whatever obligations may rest upon the carrier at the terminus of its transportation to deliver to some further carrier, in obedience to the instructions of the owner, it is acting not as carrier, but simply as a forwarder. No new arrangement having been made for transportation, the corn was delivered to the Hardin Company at Texarkana. Whatever may have been the thought or purpose of the Hardin company in respect to the further disposition of the corn, was a matter immaterial so far as the completed transportation was concerned.

17 In this respect there is no difference between an interstate passenger and an interstate transportation. If Hardin, for instance, had purchased at Hudson a ticket for interstate carriage to Texarkana, intending all the while after he reached Texarkana to go on to Goldthwaite, he would not be entitled on his arrival at Texarkana to a new ticket from Texarkana to Goldthwaite at the proportionate fraction of the rate prescribed by the Interstate Commerce Commission for carriage from Hudson to Goldthwaite. The one contract of the railroad companies having been finished he must make a new contract for his carriage to Goldthwaite, and that would be subject to the law of the State within which that carriage was to be made."

The facts of the Santa Fe Railway Company case are thus succinctly stated by the Supreme Court of Texas:

"The substance of the facts as found by the trial court and the Court of Civil Appeals seems to us to be these: The Hardin Grain Company, doing business in Kansas City, Missouri, having made a contract with parties at Goldthwaite, Texas for the delivery of two carloads of corn at that place, in order to comply with their undertaking, contracted to purchase of Harroun Commission Company, who were also doing business at Kansas City, Missouri, and had an agent at Texarkana, Texas, the same quantity of corn, to be delivered at the point last named; that the corn with which the Harroun Commission Company proposed to fulfill their contract was shipped from South Dakota to Texarkana, Texas, through Kansas City, Missouri; that while it was in transit at the latter place the Harroun Commission Company became apprised of that fact that the corn was delivered at Texarkana, Texas, in accordance with the agreement to the Hardin Grain Company, who thereupon shipped it in the same cars, without breaking bulk, over the Texas & Pacific Railway and its connection lines to Goldthwaite, Texas."

And upon these facts, in disposing of the question of whether they constituted interstate shipment, the court says

18 "Here the Harroun Commission Company, the original consignors, were the owners of the corn when shipped and until its arrival at Texarkana and delivery there to the Hardin Grain Company in compliance with their contract for its sale. They neither intended nor contemplated any shipment beyond the point to which it was consigned. When the corn was delivered to them

at Texarkana, the contract on part of the carriers was performed and the carriage so far was at an end. Even had they known that the buyers intended to have the corn transported to a further point in Texas, we fail to see that it would have altered the case. Having ceased to be the owners of the corn upon its delivery to the Hardin Grain Company at Texarkana, as contemplated in their contract, they had no further control over it nor had they any further concern with it."

As said by the Supreme Court of the United States in its opinion, [it made no difference that the title to the property was transien,]* it made no difference that the title to the property was transferred during the course of its transportation. That fact did not affect the character of the movement as evidenced by the terms of the shipping contract.

As a reason for holding that the contract of shipment alone was to be looked to, in determining the character of the transportation, Justice Brewer says:

"It must further be remembered that no bill of lading was issued from Texarkana to Goldthwaite until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, the acceptance and payment by the Hardin Company. In many cases it would work the grossest injustice to a carrier if it could not rely on the contract of shipment it has made, know whether it was bound to obey the state or Federal law, or obeying the former, find itself mulcted in penalties for not obeying the law of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract. It must be remembered that

there is no presumption that a transportation when commenced is to be continued beyond the state limits and the carrier ought to be able to depend upon the contract which it has made and must conform to the liability imposed by that contract."

And this applies with much more force to the facts of the present case, where it is sought by appellants to determine the character of the shipment, not by the intentions of the shipper and the owners of the lumber, but by the intentions of the consignee, who in fact had nothing to do with the shipping contract when made. This does not, to any extent, affect the doctrine announced in *Coe v. Errol* (116 U. S. 517) that goods became the subject of interstate commerce and pass beyond the jurisdiction of the state when they have been shipped, or entered with a common carrier for transportation to another state, or have been started upon such transportation in a continuous route or journey. The effect of this is that the grain did not begin its journey to Goldthwaite until delivery to the carrier at Texarkana for carriage to that point, as in the present case, the lumber did not begin its journey to a foreign port until the carriage from Ruliff to Sabine had terminated.

To us it seems utterly unreasonable to hold that the character of this shipment of lumber by the owner from one point in Texas

[* Words enclosed in brackets erased in copy.]

to another point in the same state, there to be delivered to its own order, under a shipping contract which was completely performed by delivery at the point of destination under the shipper's contract, should be determined by the intention of the consignee as to its future disposition. If by allowing the terms of the shipping contract, in a case of this kind, to determine whether the transportation, shall come under the protection of the laws of Congress as interstate commerce, would place it in the power of the owner of the property to control this matter, we must confess that we can see no harm in this, nor any violation of the spirit or purpose of the provisions of the Federal Constitution reserving to Congress the power to regulate commerce between the state and with foreign nations, and the laws passed in pursuance thereof.

30 Nor do we think that this case can be distinguished from the Santa Fe Railway Company case on the ground that that case involved the question of an interstate or intra-state shipment, while this involves the question of a foreign or intra-state shipment. The difference between the authority of the Interstate Commerce Commission over interstate traffic and foreign traffic in that it has control only over such foreign traffic to and from the port, and not over the ocean carriage, does not at all affect the applicability of the doctrine announced in this case, which must be governed by the same rules as if the lumber were intended by Powell Company for shipment to another state, instead of to a foreign country not adjacent to the United States.

We conclude that the trial court rightly held that upon the undisputed evidence the shipment was an intra-state shipment, and governed by the rates prescribed by the Railroad Commission of Texas.

Appellants presented a plea in abatement, to the effect, in substance, that under the provisions of Art. 4568 Revised Statutes, complaint must first be made to the Railroad Commission of Texas of such violation of law as is here complained of, and that there must first be a determination by the Commission that the rate charged is in violation of law, before suit can be instituted in the courts to recover for such violation. Appellee excepted to such plea, and the court sustained the exception and overruled the plea, and the ruling is assigned as error. There is no merit in the assignments and they are overruled.

If it had been intended by the legislature that complaint must be made to the Commission before suit could be instituted in the courts to recover over-charges for freight, we think such intention would have been more clearly expressed than is done in this article of the statute which merely provides that such complaint may be made to the Commission. It is provided by the statute that if upon hearing of such complaint it is found that there has been a
 21 violation of the law, the Commission shall first determine if the same was wilful. If not wilful the offending company shall be called upon to satisfy the damage done to the complainant. If this is not done, or if the violation is found to be wilful the Commission shall institute proceedings to collect the statutory penal-

ties due to the state, which are separate and distinct from those allowed the complainant. It is further provided that this procedure shall not abridge nor affect the right of any person to sue for any penalty that may be due any person under the provisions of law. Article 4575, R. S., under which this suit is brought, authorizes suits by any person injured for his damages and also for the penalties provided. We cannot agree with appellants that by the express provisions of the latter part of Article 4575, saving the right to sue for penalties, it was intended to limit the right thus reserved to sue for statutory penalties and by implication to prohibit suits for recovery of the actual damages. No express provision of the statute is necessary to give to the person injured by a violation of the law the right to sue for and recover his actual damages for the injury, and it was probably not thought necessary to reserve such right, or to provide specially that it should not be abridged by the provisions of Art. 4568, with regard to a hearing before the Railroad Commission. It would be most unreasonable to require an injured person to first apply to the Commission before using for his actual damages, but to leave him free for the statutory penalties, and such was not the intention of the legislature.

Under the provisions of the statutes appellee was not limited to the recovery of one single penalty, but was, we think, under Art. 4581, with regard to cumulative penalties, entitled to recover for each separate violation of the law, or each separate act of extortion as defined by Art. 4573. In view of Art. 4581, which was

22 intended to provide expressly for the cumulation of penalties for separate violations of the law, the authorities cited by appellants in support of their proposition under the 4th, 5th, and 6th assignments of error have no application. As each act of extortion is distinct and complete in itself, for which the statute provides a penalty, and gives a right of action for the recovery thereof, where there is more than one such act, to the injury of any person, recovery may be had in one suit for the penalty provided for each act. Nor would such construction of the act render it violative of Section 13, Art. 1 of the Constitution of the State prohibiting the imposition of excessive fines. (*State of Texas vs. Laredo Ice Co.* 96 T. R. 461). Such a construction of the statute does not violate the provision of the 14th amendment to the Constitution of the United States, that no person shall be deprived of his property without due process of law, nor be denied the equal protection of the law.

Appellants by their answer alleged as a defense that the rate prescribed by the Railroad Commission was unreasonably low and insufficient to afford them reasonable compensation for the service performed and required, and was confiscatory, that Section 5 of the Act of 1891 (Art. 4564, R. S.) properly construed was not intended to abridge their right to make such defense in this suit, but if it be so construed, then it was violative of Section 1 of the 14th Amendment of the Constitution of the United States in that thereby appellants were denied the equal protection of the law.

The section of the act referred to is as follows, and is set out in full in the answer:

"In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission, before the institution of such action, shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Sections 6 and 7 hereof."

23 It seems clear that the act referred to was expressly intended to apply to such a case as is presented by this petition. Its purpose is clear and unmistakable. Careful provision is made by Sections 6 and 7 of the act (Arts. 4565-4566, R. S.) for the institution and speedy trial and final disposition of actions against the Railroad Commission by any railroad company, or other party at interest, who may be dissatisfied with any rate, classification, rule, charge, order, act or regulation adopted by the Commission, to determine whether the same is unreasonable or unjust. In this way a uniform rule is established, binding upon the railroad company and shippers alike, and it was not open to either the shipper or the railroad company to say that any rate, rule, classification, or regulation, adopted by the Commission, was unjust or unreasonable until it was so declared in such a proceeding against the Railroad Commission. But it must be borne in mind that a direct and appropriate proceeding was provided in the courts of the country through which this question might be determined after full hearing of all parties, and in this the statute in question is vitally different from that held unconstitutional in *Railway vs. Minnesota* (134 U. S. 418). We are unable to conceive in what way this statute can be said to deprive appellants of the equal protection of the law.

There is no logical ground, so far as the application of the statute is concerned, to distinguish a rate which is unreasonable because it does not, after paying the expense of the service, afford at least some profit on the investment, to which the railroad companies are entitled, and a rate which is unreasonable and unjust in that it does not return to the carrier the actual cost of the service, and which is on that account, as stated by appellants, confiscatory; between a rate which barely returns the actual cost of the service, and a rate which returns less than that. A rate is unjust and unreasonable in the one case as well as in the other. There is only a difference in the 24 degree of unreasonableness. An infinitesimal fraction of a cent might determine whether a rate was simply unreasonable, or so unreasonable as to be what appellants term confiscatory.

It is no defense to appellee's claim either for the overcharge or the statutory penalties that appellants may have been innocently mistaken as to their belief that under the facts existing with regard to this shipment they had a right to charge the interstate or export rate. To allow such a defense would practically nullify the statute. The statute (Art. 4575) provides that the railroad company shall not be liable for the penalties therein provided, if it be shown that the

over-charge was unintentionally and innocently made through a mistake of fact. The over-charges here complained of were not so made. Every material fact with regard to these shipments which could affect or determine their character as intra-state or export, were as well known to appellants at the time the over-charges were made as they are now. There was no substantial dispute upon the trial as to these facts, and appellants justify the charges made upon the existence of these facts. Whether they constituted an export shipment or an intra-state shipment was purely a question of law, not even a mixed question of law and fact. As to this question of law appellants were mistaken. It is probably a harsh rule which makes them liable for heavy penalties, imposed, not for compensation, but for punishment, if they acted under such excusable mistake, even of law, but it is so written and we know of no rule of judicial action which would authorize us to set aside the plain provisions of the statute to avoid what may be the harsh consequences of its enforcement in the particular case. Courts of equity have sometimes relieved parties of the consequences of a mistake of law, sometimes under the thin disguise of declaring it a mixed question of law or fact, and sometimes without even this disguise. (*Swedesboro Building & Loan Assn. vs Gans, et al.*, 55 Atl. Rep. 82; *Ramey vs. Allison*, 64 T. R. 703; *Moreland vs. Atchison*, 19 T. R. 309.)

25 But there is no room for the exercise of this equity jurisdiction of the court in the matter of the enforcement of the plain provisions of this statute, which expressly provides that for a mistake of fact appellants may be relieved of the penalties, and impliedly that for a mistake of law they shall not be.

Appellants exaggerate, we think, the danger they were in of being mulcted in penalties for violation of the Interstate Commerce Act of Congress if they had charged the State Commission rate. That article, it is true, prescribes a heavy penalty for charging more or less than the rate filed with the Interstate Commerce Commission, but only when such violation is wilful, which it could not have been held to be in the present case. That seems to us to be the more just and reasonable rule, but the legislature has thought proper to enforce the penalties in all cases of over-charge except when made under a mistake of fact, whether or not done under such circumstances as would render the act wilful.

It appears that the agent of appellant, The Texas & New Orleans Railroad Company, at Sabine, had allowed expense bills to accumulate in his hands, instead of making his demand and collecting the freight charges on each, and in this way on five several occasions he had demanded and collected such charges, on the expense bills in his hands. The trial court concluded, as a matter of law, that this rendered appellants liable for five several penalties only under the law, and so instructed the jury. Appellee contends that each separate shipment, of which there were twenty-four on as many several days, constituted a separate and distinct offense under Arts. 4573-4575, for which appellants were liable, and requested a special charge to that effect, which was refused. The correctness of this action of the court is presented by an appropriate cross-assignment of error by appellee.

We agree with appellee as to this contention and that under the undisputed evidence appellants are liable for penalties of not less than \$125.00 nor more than \$500.00 upon each of the twenty-four separate shipments. This would ordinarily require a reversal of the judgment and that the cause be remanded upon appellee's cross-assignment of error in order that it might be determined in the trial court what amount of penalties, as between the minimum and maximum, should be recovered. But appellee agrees that, in the event *their* cross-assignment of error be sustained, this court may render judgment for the minimum penalty in each case. Inasmuch as, under our view of the law, we would be required to remand the cause with instructions to determine what amount should be adjudged to appellee for the twenty-four violations of the law, under which appellants could not be adjudged liable for less than \$125.00 for each of the twenty-four infractions of the law, for which appellee agrees that we may render judgment instead of remanding the cause, the judgment will be reformed on appellee's cross-assignment and here rendered in appellee's favor against appellants for \$1788.33, being the amount of the overcharge, and in addition for a penalty of \$125.00 for each of the twenty-four separate shipments, aggregating \$3000.00.

We have carefully examined each of the several assignments of error presented by appellants and the several propositions thereunder, and while each of them has not been discussed in this opinion, our conclusion is that none of them presents any ground for reversing the judgment, and they are severally overruled.

The judgment will be reformed and affirmed as herein indicated.

REESE,

Associate Justice.

Endorsements: No. 4920 with App. No. 6504. In Court of Civil Appeals, Galveston. Texas & New Orleans R. R. Co., et al., Appellants vs. Sabine Tram Company, Appellee. Filed in Court of Civil Appeals May 31, 1909. H. L. Garrett, Clerk. Filed in Supreme Court Aug. 17, 1909. F. T. Connerly, Clerk. Opinion. Reese, Associate Justice. Recorded 6/9/1909.

27 *Appellants' Motion for Rehearing.*

in the Court of Civil Appeals of the State of Texas for the First Supreme Judicial District, at Galveston.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA & FT. SMITH RAILWAY COMPANY, Appellants,

vs.

SABINE TRAM COMPANY, Appellee.

Motion for Rehearing.

Herein come appellants, Texas & New Orleans Railroad Company and Texarkana & Ft. Smith Railway Company, and move the court

that the judgment herein rendered reforming and rendering the judgment of the court below in favor of appellee, Sabine Tram Company, that it recover against the appellants the sum of \$1788.33 for overcharges and for \$3,000.00 penalties in the sum of \$125.00 for each of the twenty-four separate shipments, be set aside and a rehearing hereof granted and upon such rehearing that the judgment of the court below be reversed and rendered in favor of appellants or, in the alternative, that the cause be reversed and remanded for a new trial in the court below and for cause say:

I.

That the court below erred in finding as a matter of law that the rate of the Railroad Commission of Texas applicable to the shipments involved herein was $6\frac{1}{2}$ cents per hundred pounds from Ruliff, Texas, the point of origin, to Sabine, Texas on the Texas & New Orleans Railroad, the uncontradicted evidence showing that the lawful rate under the rules and regulations of the Railroad Commission of Texas, if said shipments were domestic or intra-
28 state commerce, was at the time of said shipments $12\frac{1}{2}$ cents per hundred pounds and not $6\frac{1}{2}$ cents per hundred pounds and this court erred in overruling and failing to sustain appellants' seventeenth assignment of error, herein, complaining of said action of the court below, which said assignment of error is as follows:

"The court erred in finding as a matter of law that the Railway Commission of Texas rate applicable to the shipments involved herein was $6\frac{1}{2}$ cents per hundred pounds and not $12\frac{1}{2}$ cents per hundred pounds from Ruliff, Texas, the point of origin, to Sabine, Texas on the Texas & New Orleans Railroad. The uncontradicted evidence showing herein that the lawful rate under the rules and regulations of the Railroad Commission of Texas, if said shipments were domestic or intrastate commerce, was at the time of said shipments $12\frac{1}{2}$ cents per hundred pounds and not $6\frac{1}{2}$ cents per hundred pounds."

II.

The court below erred in assuming and finding as a matter of law that the lawful rate prescribed by the Railroad Commission of Texas and in effect at the time involved herein and applicable to the shipments involved in this controversy was $6\frac{1}{2}$ cents per hundred pounds from point of origin to destination and not $12\frac{1}{2}$ cents per hundred pounds, the question as to what was the lawful rate in force under the orders of the Railroad Commission of Texas being an issue of fact to be determined under the evidence by the jury and this court erred in overruling appellants' eighteenth assignment of error complaining of said ruling of the court below, which said assignment of error is as follows:

"The court erred in assuming and finding as a matter of law that the lawful Commission rate in effect at the times involved herein and applicable to the shipments involved in this controversy was $6\frac{1}{2}$ cents per hundred pounds from Ruliff, Texas, the point of origin on the line of the Texarkana & Ft. Smith Railway Com-

pany, defendant, to Sabine, Texas, a station on the line of railway of the Texas & New Orleans Railroad Company, defendant, and not 12½ cents per hundred pounds, the question as to what was the lawful rate in force under and by virtue of the orders of the Railway Commission of Texas being an issue of fact to be determined under the evidence in this case by the jury."

Statement.

The Seventeenth and Eighteenth assignments of error as found on pages 130 and 132 of appellants' brief are the eighth and ninth assignments of error as found on pages 110-111 of the transcript. The court below found as a matter of law that the lawful state rate applicable to the shipments involved was 6½ cents per hundred pounds, appellants claiming that the rate lawfully applicable thereto was the interstate rate of 15 cents per hundred pounds. Judgment was entered for overcharges to the extent of 8½ cents per hundred pounds aggregating \$1788.33. Appellants claim that the state rate applicable to this movement was 12½ cents per hundred pounds and that the overcharges, conceding that the state rate was lawfully applicable, should have been only 2½ cents per hundred pounds instead of 8½ cents per hundred pounds and that, therefore, the judgment for overcharges should have been proportionately reduced. This proposition has not been discussed by the court in its opinion and special attention is now directed thereto and appellants move the court for additional findings of fact thereon, embracing the following:

Appellant, Texarkana & Ft. Smith Railway Company, specially pleaded that the rate of the Railroad Commission of Texas applicable to the shipment in controversy from Ruliff to Sabine was 12½ cents per hundred pounds and not 6½ cents as contended by appellee. (Tr. p. 73.)

Appellants offered in evidence the class and commodity tariffs of the Railroad Commission of Texas as embraced in its Fifteenth annual report and dated October 31, 1906, as follows:

30 *"Fifteenth Annual Report of the Railroad Commission of the State of Texas.*

"OFFICE OF THE RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 31, 1906.

"Class and commodity tariffs of the commission, which are now in force, are embraced in Appendix A:

"APPENDIX A, PAGE 85.

"Showing all tariffs made by the Commission in the form in which at the date of this report they existed, all matter altered or supplanted by amendment having been eliminated."

"T. & N. O. Authority No. 47 effective March 3, 1900: Rates

for the transportation of lumber and articles taking lumber rates in carload lots from all points on the Texarkana & Fort Smith Railway, south of the Louisiana-Texas state line to all stations on the Galveston, Harrisburg & San Antonio Railway, Houston & Texas Central Railroad and the Texas & New Orleans Railroad, the same as now in effect from Beaumont, except that the minimum through rate shall be $12\frac{1}{2}$ cents per hundred pounds." (See Statement of Facts pp. 82-83).

Appellee offered in evidence circular No. 1169 of the Railroad Commission of Texas as follows:

"General Notice Circular No. 1169."

Hearing July 21, 1900.

AUSTIN, TEXAS, July 23, 1900.

"It is hereby ordered that the following rates be adopted for the transportation of lumber and articles taking lumber rates in carload lots, minimum rates 24000 pounds per car, from points on the Texarkana & Fort Smith Railway north of Beaumont to the Sabine River to points specified below:

"Rates: To Beaumont, Port Arthur, Sabine Pass, 4 cents per hundred pounds. To stations south of Houston on the Gulf Colorado & Santa Fe and the Galveston, Houston & Henderson and Galveston, Houston & Northern, except Galveston, $8\frac{3}{4}$ cents per hundred pounds. To all stations on the Missouri, Kansas & Texas Railway of Texas, except Trinity and Sabine branch, same rates apply from Beaumont to said stations.

"This order shall take effect August 13, 1900. (Statement of Facts pp. 61-62.)

Appellee also introduced in evidence Authority No. 7680, 102 and 118 as shown on page 188 of the Railroad Commission's report of 1906 as follows:

"Effective May 1st and August 1, 1902; September 1, 1903 and January 13, 1904:

"Rates in cents per hundred pounds to apply on pine lumber and articles taking pine lumber rates between points on the Tex. & New Orleans Railroad, Stilson & East, also Turney & South."
(Here follows tables showing distance in miles and rates.)

To this order is attached the following exceptions, to wit:

"Exceptions: (1) The following rates shall apply to Sabine and Sabine Pass, rates to or from intermediate points not to be affected from Beaumont, 2.5." (S. F. pp. 62-63.)

Appellee also introduced in evidence from page 65 of the report of the Railroad Commission of Texas for the year 1906 the following:

"APPENDIX A.

"General rules governing the application of all rates: The rate between two given points shall not in any case exceed the sum of the rates applying between such given points and a point intermediate." (S. F. p. 62.)

In connection with this evidence thus introduced, Mr. Arthur, the chief rate clerk of the Railroad Commission of Texas, testified as follows:

"In connection with Authority No. 76, 80, 102 and 118 in the appendix to the Railroad Commission's Report in the year 1906, the term 'authority' is used instead of 'circular' or 'tariff' because it is a special document and doesn't amend a general tariff or contain a general order for application by all railroads.

There are some circulars we give the term 'circular' to them instead of 'authority' and are in response to applications. These circulars are issued for those. The general rule is to give an authority number. We have a separate record for authorities to those of applications, but an application when made by a railroad for a certain rate, the term used to designate that rate while fixed is generally 'authority,' but if it is for general application or to amend a fixed tariff, we give it a circular number, but if it is a special rate in itself, the general rule is to designate and term it an authority, giving its number."

These excerpts from the testimony constitute the evidence from which the court and jury had to determine which was the lawful state rate applicable to shipments of lumber in carload lots from Ruliff to Sabine. It appears from the order of the Railroad Commission as found on page 184 of the Fifteenth annual report of the Railroad Commission of Texas which purports to give all of the rates, tariffs, rules and regulations of that body effective on October 31, 1906, that T. & N. O. authority No. 47 which became effective March 3, 1900, prescribed a minimum through rate from all points on the Texarkana & Fort Smith Railway south of the Louisiana-Texas state line to all points on the Texas & New Orleans Railroad of 12½ cents per hundred pounds. Appellee contends that the general schedule of rates applicable to the Texarkana & Fort Smith Railway and the giving of rates on that line alone and also the exception above quoted making a rate of 2½ cents from Beaumont to Sabine and applying thereto the general rule that the through rate should not exceed the sum of the locals, will make a 6½ cent rate from Ruliff, which is a point on the Texarkana & Ft. Smith Railway, south of the Sabine River in Texas, the correct through rate. Here then, we have a through rate constructed from the application of the two local tariffs by the use of the rule mentioned. As opposed to this constructive rate, we have in effect on October 31, 1906, a special order of the Railroad Commission of Texas making a minimum through rate from points on the Texarkana & Ft. Smith Railway south of the Louisiana-Texas line to all points on the Texas

& New Orleans Railroad of $12\frac{1}{2}$ cents per hundred pounds. The rule is well settled that where there is a general law in effect and at the same time a special law is in effect governing any part of the subject matter of the general law, the matter embraced within the special law is taken out from the operation of the general enactment. By what process, then does the court below or does this court find as a matter of law that this special order of the Railroad Commission of Texas prescribing a $12\frac{1}{2}$ cent rate between these particular points is not effective and that the constructive rate of $6\frac{1}{2}$ cents found by adding the local under the general tariff from Ruliff to Beaumont and the local from Beaumont to Sabine of $2\frac{1}{2}$ cents exclusively applies. Surely if, on the record without explanation by outside testimony, where we have a general order establishing a schedule of rates on each of two lines and the through rate can only be obtained by the application of the general rule that it shall not exceed the sum of the locals and at the same time we find a special and specific order which establishes by special rule the $12\frac{1}{2}$ cent rate between the two points involved by all rules of construction, the special rate must obtain. We contend, therefore, that on the record it was the duty of the court below and of this court to have found as a matter of law that the $12\frac{1}{2}$ cent rate applied. If on the record it was uncertain as to which rate applied, it became the duty of the plaintiff to have adduced evidence showing which rate did actually apply. This might have been done by the introduction of testimony showing the course of practice of each carrier in the premises and that of the Railroad Commission, thereupon leaving it to the jury under proper instruction from the court to determine which was the legal rate, if any there was. The court below, however, and this court assume that the constructive rate was the only legal rate, in the face of a special order prescribing a particular rate between the particular points. Without the introduction of any extraneous evidence, the natural legal presumption is that the special regulation must prevail over a rate constructed from two local rates by the aid of the general rule referred to. We submit, therefore, either that it was the duty of the court to hold as a matter of law that the $12\frac{1}{2}$ cent rate was applicable or to have submitted the proposition to the jury under appropriate instructions to determine which of the two rates was the legal rate, and we respectfully ask the court to reform its judgment in this particular and hold that the legal state rate between the two points was $12\frac{1}{2}$ cents instead of $6\frac{1}{2}$ cents per hundred pounds and that it make additional findings of fact on such proposition as are above indicated, embracing especially therein the T. & N. O. Authority No. 47, effective March 3, 1900, and in effect October 31, 1906, as shown by the Fifteenth Annual Report of the Railroad Commission of Texas.

III.

Appellants respectfully ask the court to reform its finding of facts in the last paragraph of page five of its opinion in this: That the court there makes the following finding of fact:

"Upon shipment of freight for export, only forty-eight hours' free time was allowed for unloading cars, after which demurrage was charged and if not removed from railroad premises when unloaded, a storage charge was made in addition. No such charge was made upon any of the lumber involved in this suit."

In this finding, the word "not" by inadvertence is omitted and the finding should read, "Upon shipment of freight not for export, only forty-eight hours' free time was allowed," etc."

It is also asked that the following additional finding of facts be made, to-wit:

"The freight rate due under the tariff on file with the Interstate Commerce Commission and collected on these shipments was 15 cents per hundred pounds and under this rate, the services rendered without other charge included switching from Sabine station to the docks, seven days' free time exclusive of Sundays within which to unload the lumber from the car and thirty days' free storage of the lumber upon the docks at the wharves or in the slips belonging to the T. & N. O. Railroad Company. W. A. Powell & Company, Ltd., availed itself of all these services and privileges which were stipulated for by the Interstate Commerce Commission tariff and included in the 15-cent rate charged on export freight." (Testimony of T. G. Beard, p. 72.)

IV.

Appellants ask the court to make the additional finding of fact as follows:

"There is not now and was not at the time these shipments moved any local market for lumber at Sabine, the population of which place does not exceed fifty in number. Appellees have never done any local business at that point. All of the lumber that goes to Sabine is for purpose of export. For the year 1905, there was exported through the port of Sabine 14,667,670 feet of lumber; for the year 1906, 39,554,000 feet. Not more than one car of lumber per year is used at the town of Sabine locally. The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine.

V.

Appellants ask the court to make the following additional finding of fact, to-wit:

"The 15-cent rate applied and collected by appellants was the lawful interstate rate as prescribed by interstate tariff duly filed and published with the Interstate Commerce Commission at Washington as set out in appellants' exhibit No. 2 filed with answer of Texas & New Orleans Railroad Company, which tariff contains the following clause, to-wit: 'Shipments destined — either port (Sabine Pass or Pt. Arthur) for local delivery and consumption, regular tariff rate will apply, but if switched to docks, wharves or ship for export other than Mexican or United States coastwise

moving beyond the State of Texas above proportional rates will apply." See page 88, Appellants' brief.

VI.

The court erred in overruling appellant's first assignment of error which is as follows:

"The court erred in overruling and failing to sustain the plea in abatement filed by the Texas & New Orleans Railroad Company, filed herein, wherein and whereby it is set up and alleged that under and by virtue of the provisions of Art. 4583, of Chapter 13, Title 94, of the Revised Statutes of Texas, the exclusive jurisdiction is given to the Railway Commission of Texas to hear and determine, in the first instance, complaints of this nature and to award damages due for such violation in case it, the railway commission, finds there has been such violation."

VII.

The Court erred in overruling appellants' second assignment of error, which is as follows:

"The court erred in overruling and failing to sustain special exception contained in paragraph 3 of the amended original answer of the defendant, the Texas & New Orleans Railroad Company, to the effect that it appears from plaintiff's petition that plaintiff seeks to recover in this suit damages for alleged violation by defendants of the laws of the State, and the regulations of the Railway Commission, in that it is alleged that defendant charged another and different rate for the shipments involved in the controversy set up in this suit from the rate previously fixed by the Railway Commission of the State of Texas, and alleged by plaintiff to be applicable thereto, which damages, if the facts be as plaintiff alleges, are such as can be awarded upon a hearing before the Railway Commission of

37 Texas; and the said Railway Commission of Texas, under the law, has sole and exclusive authority to grant relief sought by plaintiff herein, as regards such damages, and this court has no jurisdiction to hear and determine such cause of action as appears from the allegation in plaintiff's petition."

VIII.

The court below erred in overruling appellants' special exception contained in paragraph four of the amended original answer of defendant, Texas & New Orleans Railroad Company, and special exception of defendant, Texarkana & Ft. Smith Railway Company to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railroad Commission does not permit the cumulation of penalties thereunder and under the allegations in plaintiff's petition it was entitled to recover only one penalty of not less than \$125.00 nor more than \$500.00 and that it could only recover only one penalty for alleged overcharge up to the filing of suit, and this court erred in

overruling appellants' third assignment of error complaining of said ruling of the trial court, which said assignment is as follows:

"The court erred in overruling and failing to sustain special exception contained in paragraph 4 of the amended original answer of the defendant, the Texas & New Orleans Railroad Company, and the special exception of the defendant, Texarkana & Ft. Smith Railway Company, to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railway Commission of Texas, does not permit the cumulation of penalties thereunder, and that, under the allegations of the plaintiff's petition, it was entitled to recover only one penalty of not less than one hundred and twenty-five dollars (\$125.00), nor more than five hundred dollars (\$500.00), that it could only recover one penalty for all alleged overcharges up to the time of filing its suit."

IX.

The trial court erred in refusing to give special charge No. 2 asked by defendant to the effect that plaintiff could not recover more than one penalty of not less than \$125.00 nor more than \$500.00, and this court erred in overruling appellants' fourth assignment of error which is as follows:

"The court erred in failing and refusing to give charge No. 2, asked by the defendants, to the effect that plaintiff in no event can recover more than one penalty of not less than \$125.00, nor more than \$500.00, in this cause."

X.

The court erred in overruling appellants' special exception contained in paragraph five of the answer of the Texas & New Orleans Railroad Company and in overruling appellants' fifth assignment of error complaining of said action of the trial court, which assignment is as follows:

"The court erred in overruling and failing to sustain special exception of the defendant Texas & New Orleans Railroad Company, as contained in paragraph five of the amended original answer of said company, to the effect that if Article 4575 of the Revised Statutes of the State of Texas, being Section 17 of the Act of April 3d, 1891, creating a Railway Commission, and under the provisions of which this action is brought, permits the cumulation of penalties for alleged successive acts of overcharge, committed prior to the institution of the suit, that then, and in that event, the same is invalid and void as in contravention of Sec. 13, Art. 1, of the Constitution of the State of Texas, which provides that 'excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.' And in contravention of the 14th amendment to the Constitution of the

30 United States, which provides: 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law'."

XI.

The court below erred in charging the jury that plaintiff was entitled to recover penalties in the sum of not less than \$825.00 nor more than \$2500.00 for the reason that the uncontradicted testimony herein and the law under which plaintiff seeks to recover does not permit the recovery of more than one penalty of not less than \$125.00 nor more than \$500.00 in any event, and this court erred in overruling appellants' sixth assignment of error complaining of said action of the trial court which is as follows:

"The court erred in holding that plaintiff, if entitled to recover actual damages as for an overcharge, was entitled to recover penalties in the sum of not less than six hundred and twenty-five dollars (\$625.00), and not more than twenty-five hundred dollars (\$2500.00), and in so charging the jury, for the reason that the uncontradicted testimony herein, and the law under which plaintiff seeks to recover, does not permit the recovery of more than one penalty of not less than one hundred and twenty-five dollars (\$125.00), nor more than \$500.00 in any event."

XII.

The court erred in overruling and failing to sustain appellants' seventh assignment of error, which is as follows:

"The court erred in holding and charging the jury, as a matter of law; that the plaintiff was entitled to recover five (5) penalties, amounting in the aggregate to not less than six hundred and twenty-five dollars (\$625.00), nor more than \$2500.00."

XIII.

The court erred in overruling and failing to sustain appellants' eighth assignment of error which is as follows:

40 "The court erred in instructing the jury to find in favor of plaintiff for any sum, as penalties, and in entertaining judgment for the sum of \$1785.00, as penalties. Article 4575 of the Revised Statutes of Texas, under which said penalties were allowed and adjudged, is unconstitutional and void, and is violative and in contravention of Sec. 13, Art. 1 of the Constitution of Texas, which provides that no excessive fines shall be imposed, nor cruel or unusual punishment inflicted; and is also in contravention of the Fourteenth Amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty or property without due process of law, nor denied the equal protection of the law, within the jurisdiction of the State; that the infliction of penalties, not less than \$125.00, nor more than \$500.00, for each overcharge, is an excessive fine,

and is depriving the defendants of the equal protection of the laws, and taking their property without due process of law."

XIV.

The court erred in sustaining special exception No. 7 contained in plaintiff's first supplemental petition filed January 20, 1908 to the eighteenth paragraph of the first amended original answer of defendant, Texas & New Orleans Railroad Company, and this court erred in overruling appellants' ninth assignment of error complaining of such action of the trial court, which is as follows:

"The court erred in sustaining special exception No. 7, contained in plaintiff's first supplemental petition, filed herein January 20th, 1908, to paragraph 18 of the first amended original answer of defendant, the Texas & New Orleans Railroad Company, as follows:

"7. Plaintiff further specially excepts to the 18th paragraph of said answer, and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railway Commission of Texas in an action between the Sabine Tram Company, plaintiff herein, a private party, and the railway companies affected by said rates in violation of Art. 4564, of the Revised Statutes of the State of Texas, the same being Section 5 of an act passed by the 22d Legislature of the State of Texas, entitled 'An Act to establish a Railway Commission for the State of Texas,' etc., and appearing on page 58 of the Acts of 1891, for the reason that in an act to recover penalties for an alleged violation of the rates, orders, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the 14th amendment to the Constitution of the United States."

Statement.

Defendant, Texas & New Orleans Railroad Company, in paragraph eighteen of its first amended original answer (Tr. pp. 58-61) set up that the rate of 6½ cents from Ruliff to Sabine, and especially the rate applicable to the Texas & New Orleans Railroad of 2½ cents from Beaumont to Sabine, was unjust, unreasonable and confiscatory and did not pay for the cost of the service, and that such a rate being in violation of the Fourteenth Amendment to the Constitution of the United States, could not be made the basis either for an action for overcharge or especially for an action for penalties and that Article 4564 of the Revised Statutes of the State of Texas, being section five of the Railroad Commission act, which provides that in actions between private parties brought under the Railway Commission law the rates, charges, orders, etc., of the

Railway Commission are to be held conclusive and not subject to be controverted until finally found otherwise in a direct action brought for that purpose, appellants alleging that said article has no application to the proceedings for the collections of penalties under a void rate and that if so applied, it is in conflict with, and contrary to the provisions of Section 1, Art. 14 of the

42 Amendment to the Constitution of the United States. This answer having been excepted to by appellee, was stricken out by the court, (Tr. p. 91) and appellants reserve due exception.

XV.

The trial court erred in failing to direct a verdict in favor of appellants and in failing and refusing to give special charge No. 1 asked by appellants instructing the jury to file a verdict in favor of defendants and each of them and this court erred in overruling appellants' tenth assignment of error complaining of said action of the trial court, which is as follows:

"The court erred in failing to direct a verdict in favor of the defendants herein, and in failing and refusing to give special charge No. 1, requested by defendants, directing the jury to return a verdict in favor of the defendants and each of them."

XVI.

The trial court erred in rendering and entering judgment for any amount against appellants for the reason that the shipments involved in this controversy constituted and were foreign commerce moving from a point within the United States through a port of trans-shipment to a foreign country and appellants had prior to said shipments established and filed with the Interstate Commerce Commission and published schedules and tariffs of rates applicable to such shipments and such rates so filed and published were the legal rates applicable thereto, and this court erred in overruling appellants' eleventh assignment of error complaining of said action of the trial court, which is as follows:

"The court erred in rendering and entering judgment for any amount against the defendants herein, for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce, moving from a point within the United States, through a port of trans-shipment to foreign countries, and that these defendants herein, prior to said shipments, had legally established, filed with the Interstate Commerce Commission, and published schedules and tariffs of rates applicable to such shipments, and that the rates so established in said tariffs and schedules, filed and published, and were the legal rates applicable thereto."

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XVII.

The trial court erred in failing and refusing to direct a verdict in favor of appellants and in entering judgment in favor of appellee

for the sum of \$1788.33, overcharges, and for \$1785.00, penalties, because the evidence shows without dispute that when the shipments of lumber mentioned in plaintiff's petition began their journey from Ruliff, Texas, the point of shipment, they were destined to foreign country and became and were foreign commerce and not intra-state commerce subject to the regulations of the Railroad Commission of Texas, but as such foreign commerce, were subject only to the provisions of the Interstate Commerce Act of the Congress of the United States, approved February 4, 1887 and acts amendatory thereof and this court erred in overruling and failing to sustain appellants' twelfth assignment of error complaining of said action of the trial court, which is as follows:

"The court erred in failing and refusing to direct a verdict in favor of the defendants, because the evidence shows, without dispute, that when said lumber mentioned in plaintiff's petition started on its journey from Ruliff, Texas, same was destined to a foreign country, and constituted foreign commerce, and not intra-state commerce; that it was in fact shipped from Ruliff, Texas, a point in the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, to a foreign country, and was not subject to or controlled or affected by the rules, rates or regulations of the Railway Commission of the State of Texas, and the enforcement of said rules, rates and regulations of the Railway Commission of Texas, in respect to said shipments is, therefore, violative of Sec. 8, Art. 1, of the Constitution of the United States, and the Act commonly known as the Interstate Commerce Act, approved February 4th, 1887, and acts amendatory thereof."

Statement under Three Preceding Grounds and Assignments.

Each of the carriers, appellants herein, in addition to answering the general denial and interposing plea of not guilty, filed special answers setting up that at the time of the shipments in controversy they were each engaged in interstate and foreign commerce; that Sabine was a port of trans-shipment situated on the Gulf of Mexico; that prior to such shipments, each had duly and legally established, filed with the Interstate Commerce Commission in accordance with the law and duly published its tariff of rates on lumber for export, moving from Ruliff, a point on the line of the Texarkana & Ft. Smith Railway, to Sabine Pass on the line of the Texas & New Orleans Railroad; that under such tariffs so legally in force, the legal rate applicable to such shipments was 15 cents per hundred pounds; that each and all of said shipments were at the time of delivery intended for export and moved in continuous transit over the lines of appellants from Ruliff to shipside and were thence transported by boat to Europe without break in continuous movement from point of origin to delivery to ship for export to Europe. That each and all of said shipments were foreign commerce and that the only legal rate applicable thereto was said rate so established and filed with the Interstate Commerce Commission and that for appellants to have collected the

rate set up by appellees as prescribed by the state Railroad Commission or any other or different rate from that contained in the tariff rates so filed with the Interstate Commerce Commission would have been to have exposed appellants and each of them to the pains and penalties prescribed by the Act of Congress approved February 1887 and acts amendatory thereof, and that it was not within the power of appellee by consignment of said shipments to its own order at Sabine to evade the interstate rate. The evidence without controversy shows that the lumber shipped was of a peculiar character

used only for export; that it was intended for export at the time of the contract of purchase by W. A. Powell & Company, Ltd.; that appellee knew these facts; that at the time of delivery to appellant, Texarkana & Ft. Smith Railway Company, Ruliff it began an unbroken and continuous journey thence to a place where it was delivered into the holds of ships chartered for that purpose before its arrival at the port of trans-shipment, Sabine, and thence transported by boat to European ports. That these shipments were consigned to the order of appellee with directions to notify W. A. Powell & Company, Ltd., which latter company paid the freight thereon and received the shipments, such freight being repaid by appellee, same being delivered into the ships of appellant, T. & O. R. R. Company at its wharves at Sabine Pass and being accorded the seven days' free time allowed upon export lumber and the wharfage and switching charges applicable thereto being absorbed in the 15-cent export rate.

XVIII.

The trial court erred in permitting the recovery of penalties in the amount against appellants herein and the verdict and judgment rendered is erroneous in finding for plaintiff upon the issue of penalties herein and this court erred in overruling appellants' thirteen assignments of error complaining of the action of the trial court on that particular, which assignment of error is as follows:

"The court erred in permitting the recovery of penalties in the amount herein, and the verdict and judgment rendered herein is erroneous, in finding for plaintiff upon the issue of penalties herein in this, that the uncontradicted testimony shows that the shipments by plaintiff declared upon, moved in a continuous and unbroken journey from Ruliff, Texas, the point of origin, through Sabine, port of trans-shipment, to a foreign port; that prior to said shipments defendants had promulgated and filed with the Interstate Commerce Commission tariffs or rates applicable to such movements, and that

defendants actually applied only such rates to such movements that defendants, under an Act to Regulate Commerce approved Feb. 4th, 1887, and acts amendatory thereof, and the Act of Congress, approved February 19th, 1903, commonly known as the Elkins Act, and acts amendatory thereof, was compelled under the threat of severe penalties, to apply said tariff and other tariffs; and that under the Railroad Commission Act of Texas the charging and receiving of freight charges, in excess of the rates prescribed by said commission, is punishable by a penalty of not less

than one hundred and twenty-five dollars (\$125.00), nor more than \$500.00, and that to compel these defendants, at their peril, to decide, as a matter of law, which was the correct rate, and to punish them by the infliction of said penalties for a mistake of law, as to which was applicable is to deprive them of their property without due process of law, and deprive them of the equal protection of the law, contrary to the 14th amendment of the Constitution of the United States."

XIX.

The trial court erred in refusing to give defendant's special charge No. 7 and this court erred in failing to sustain and in overruling appellants' fourteenth assignment of error, which is as follows:

"The court erred in failing and refusing to give defendant's special charge No. 7, to the effect that defendants having, prior to the shipments in controversy, duly and legally established, filed with the Interstate Commerce Commission, and published, tariffs of rates covering shipments of lumber from Ruliff, Texas, to Sabine, Texas, over their respective lines, in carload lots, for export to foreign countries, other than Mexico, and that the freight charges herein collected were charged and collected under and in pursuance of such tariffs, and that the shipments involved, actually moved in carload lots, in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment, and were thence actually exported to Europe; that, as a matter of law, it was the duty
47 of defendants to charge and collect no other freight charges than those prescribed in the tariffs aforesaid, and if they had charged any other rate than that prescribed, they would have been subjected to penalties prescribed in the Act to regulate Interstate and Foreign Commerce and the acts amendatory thereof. And that, regardless of whether the lumber transported constituted foreign or interstate commerce, or intra-state commerce, or domestic commerce, it was the defendants' duty to apply the tariffs so established and no other tariff, and that, therefore, they should find a verdict for the defendants; both upon the issue of actual overcharge demanded, and the penalties sued for."

XX.

The court below erred in instructing the jury to render a verdict for overcharges in the sum of \$1788, and for penalties and in entering judgment for said overcharges and for penalties as found by the jury in the sum of \$1785.00, for the reason that section 8, Art. 1 of the Constitution of the United States and the Act of Congress commonly known as the Interstate Commerce Act, approved February 4, 1887, and acts amendatory thereof authorized and permitted appellants to charge and collect the rates prescribed and established by tariffs filed with the Interstate Commerce Commission and said verdict and judgment is a denial of the right so claimed by appellants under the Constitution and laws of the United States and this court erred in overruling and failing to sustain appellant's fifteenth assign-

ment of error wherein it complains of the action of the court below in that regard, which said assignment is as follows:

"The verdict of the jury and the judgment of the court is erroneous, because the Constitution of the United States, and especially Art. 1, Sec. 8 thereof, and the Act of Congress commonly known as the Interstate Commerce Act, approved February 4, 1887, and the acts amendatory thereto, authorize and permit the defendants to charge and collect the rates named in the tariffs promulgated and filed with the Interstate Commerce Commission, and said verdict and
48 judgment is a denial of that right so claimed by defendant, under said Constitution and laws of the United States."

XXI.

The trial court erred in finding as a matter of law and in so instructing the jury that the shipments involved constituted intra-state or domestic commerce, it being an issuable fact to be determined by the jury whether or not such shipments were domestic commerce or foreign commerce subject to the laws of the United States, and this court erred in overruling appellants' sixteenth assignment of error complaining of the action of the trial court in that regard, which is as follows:

"The court erred in assuming and finding, as a matter of law, that the commerce affected by the shipments in controversy herein was intra-state commerce and not foreign commerce, such matter being an issuable fact under the evidence herein, to be determined by the jury."

Statement.

It is set up by answer that these shipments constituted foreign commerce. The evidence shows that before the logs from which the lumber was manufactured were hauled to the mill it was intended for foreign shipment; that the lumber was of a peculiar character used only in foreign commerce; that W. A. Powell Company, Ltd., were exporters engaged only in foreign commerce; that appellee knew the lumber was intended for foreign shipments; that Sabine, the place of delivery, was not a local market; that no lumber was consumed there locally; that a large stream of such commerce flowed regularly through such point to shipside for export; that prior to the beginning of the movement ships had already been chartered to receive it upon its arrival at the end of the transit and that it was deposited from the cars into the slips at the wharves and thence promptly conveyed to the hold of the awaiting ships which transported it at once to

European ports so that from the point of origin there was a
49 continuous and unbroken transit to Europe. This lumber was consigned to the order of appellee at Sabine with directions upon the bill of lading to notify W. A. Powell Company, Ltd. Immediately upon receipt of the bill of lading, it was forwarded in each case with draft attached by the bank to New Orleans for collection and the draft was usually paid before arrival of the shipment at Sabine. There the freight was paid by the agent of W. A. Powell

Company, Ltd., and repaid to them by appellee, the way-bills in case of each shipment bearing the notation "for export," all parties to the transaction being fully aware prior to the beginning of the shipment that it was export material. Appellees having no depot of concentration at Sabine, doing no local business at Sabine, it becomes an issue as to whether appellee in consigning to itself at Sabine under shipper's-order-notify bill of lading was not by this subterfuge attempting to evade the interstate rate and not in good faith making a local shipment. It is submitted that this was, if not as a matter of law interstate or foreign commerce, was at least an issue which the jury had the right to determine.

XXII.

The trial court erred in refusing to give special charge No. 3 asked by the Texarkana & Ft. Smith Railway Company to the effect that plaintiff was not entitled to recover any penalty against that company and directing the jury to find a verdict in favor of that company on the issue of penalties, and this court erred in overruling the nineteenth assignment of error complaining of the action of the trial court in that particular, which is as follows:

"The court erred in failing and refusing to give special charge No. 3, asked by defendant Texarkana & Fort Smith Railway Company, to the effect that plaintiff cannot recover any penalty against the Texarkana & Fort Smith Railway Company, and directing the jury to find a verdict in favor of that company on said issue."

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Statement.

The Texarkana & Fort Smith Railway Company published no export rate on lumber from Ruliff to Sabine. It publishes a local interstate rate from Ruliff to Beaumont. The interstate rate collected was the sum of that local and the export rate of the Texas & New Orleans Railroad Company. The rate of 15 cents was collected by the agents of the latter company. The Texarkana & Ft. Smith Railway Company pleaded that the overcharge, if any was made, was innocently made and under a mistake of fact.

XXIII.

The trial court erred in refusing to give special charge No. 4 requested by the Texas & New Orleans Railroad Company to the effect that there were no facts in the evidence which would justify a verdict for penalties against that Company, and this court erred in overruling appellants' twentieth assignment of error complaining of the action of the trial court in that particular, which is as follows:

"The court erred in failing and refusing to give special charge No. 4, requested by the defendant, the Texas & New Orleans Railroad Company, to the effect that there are no facts in evidence which will justify the jury in rendering a verdict for penalties in any amount against the Texas & New Orleans Railroad Company and instructing them to find a verdict in its favor upon that issue."

Statement.

The testimony shows that the general freight agent of the Texas & New Orleans Railroad Company caused the collection of the rate fixed by the Interstate Commerce tariff under the honest belief, after investigation and acting under advice of counsel, that the shipments in question were in fact for export and constituted a part of the foreign commerce of the country.

XXIV.

The court erred in overruling and failing to sustain appellants' thirty-first assignment of error, which is as follows:

51 "The court erred in holding, as a matter of law, that the action of defendants, in applying the Interstate Commerce Commission rates, regularly established, filed and published by the defendants, to the shipments in controversy herein, instead of the rates prescribed by the Railway Commission of Texas, if a mistake, was a mistake of law, and not of fact, and in refusing to submit to the jury the issue as to whether the defendants herein, in applying the rates in controversy, were acting under an honest belief that the rates applied to the shipments in controversy were the lawful rates; and in failing and refusing to give special charge No. 5, requested by defendants, to the effect that if the defendants, their servants and agents, believed in good faith, that the shipments in controversy herein were foreign commerce, and so believing, applied said rates in good faith; that the same constituted a mistake of fact, which would excuse defendants from the infliction of the penalties sued for."

XXV.

The court erred in overruling appellants' thirty-second assignment of error, which is as follows:

"The court erred in failing and refusing to give special charge No. 6, asked by the defendants, to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon the lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company, situate adjacent to the station of Sabine, Texas, on a road of the latter company, when intended for export to foreign countries, other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the interstate tariffs so filed; and that, if they believed from the evidence that the defendant, The Texas & New Orleans Railroad Company, and its

52 agents, acting in that behalf, believed in good faith, and acting upon reasonable grounds for that belief, that the shipments in controversy were foreign shipments, and intended for export to foreign countries, other than Mexico, then, in that event, they should find for the defendants upon the issue of penalties therefore submitted by the court."

XXVI.

The court erred in overruling appellants' twenty-third assignment of error, which is as follows:

The court erred in permitting a recovery for penalties, under the facts in this case, for the reason that, under the Constitution and laws of this State, no penal act which is so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, can be enforced."

XXVII.

The District Court of Jefferson County erred in rendering judgment for the sum of \$1788.33 for overcharges, for the reason that the evidence shows that the shipments involved were foreign commerce and not subject to the rates, rules and regulations of the Railroad Commission of Texas and, as such foreign commerce, was subject only to the rates, rules and regulations established by appellants filed with the Interstate Commerce Commission and duly and legally published and applicable thereto, and this court erred in affirming said judgment.

XXVIII.

The District Court of Jefferson County erred in rendering judgment for the sum of \$1788.33 for alleged overcharges, and this court erred in affirming said judgment for the reason that if the shipments in controversy should be held to constitute intra-state or domestic commerce subject to the rules and regulations of the Railroad Commission of Texas, the Texas rate applicable thereto was not a rate of 6-½ cents per hundred pounds as found by the trial court, but was 12-½ cents per hundred and the overcharge, therefore, was not 8-½ cents per hundred pounds, that is the difference between the interstate rate collected of 15 cents per hundred pounds and 6-½ cents per hundred pounds, but was only 2-½ cents per hundred pounds or the difference between the proper state rate thereto, to-wit, 12-½ cents and the rate collected, to-wit, 15 cents per hundred pounds.

XXIX.

The court erred in its judgment herein in so reforming the judgment of the court below and rendering the same as that a separate penalty of \$125.00 might be collected for each of twenty-four shipments, that is to say, for \$3,000.00, for the reason that under the statute of the State of Texas in such case made and provided, but one penalty can be recovered for overcharges prior to the institution of suit and the shipper is not permitted to withhold suits and thus accumulate the penalties, but is permitted, under the statute, to recover one penalty only, and the judgment of this court and of the trial court is excessive in so far as it permits a recovery for more than one penalty of not less than \$125.00 nor more than \$500.00.

Appellants aver that Messrs. Greer, Minor & Miller are attorneys for appellee, Sabine Tram Company, and that they reside at Beaumont in Jefferson County, Texas.

Wherefore, appellants move the court for a rehearing in this cause that the judgment heretofore rendered be set aside and upon such rehearing, that this cause be reversed and dismissed, or in the alternative, that it be reversed and remanded for a new trial in the court below and appellants further move for additional findings of fact as hereinabove prayed for.

Respectfully submitted,

TEXAS & NEW ORLEANS RAILROAD
COMPANY,
TEXARKANA & FT. SMITH RAILWAY
COMPANY,

Appellants;

By GLASS, ESTES AND KING,
PARKER, HEFNER & ORGAIN,
BAKER, BOTTS, PARKER &
GARWOOD, *Attorneys.*

54 Endorsed: 4426/4920. In the Court of Civil Appeals at Galveston Texas. Texas & New Orleans R. R. Company Texarkana & Ft. Smith Railway Company, Appellants vs. Sabine Tram Company, Appellee. Motion for Rehearing. Filed in Court Civil Appeals Jun- 10, 1909. H. L. Garrett, Clerk. For Rehearing Refused. For additional findings Granted in Part.

Endorsed: No. 4920. With App. No. 8504. Filed in the Supreme Court Aug. 17 1909, F. T. Connerly, Clerk.

55 *Appellee's Motion to Reform Findings of Fact, &c.*

In the Court of Civil Appeals of the First Supreme Judicial District,
at Galveston.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD Co. et al., Appellants,
vs.
SABINE TRAM COMPANY, Appellee.

To the Honorable Judges of said Court:

Now comes the appellee and moves that the Court reform its findings of fact in the particulars hereinafter indicated.

1.

Appellee moves that the Court reform its findings so as to set out substantially the following:

"The Sabine Tram Company did not, at the time when any of said shipments were made, know any destination to which the lumber

would go other than Sabine, although it inferred that it would ultimately be shipped out of Sabine; it did not intend any other destination than Sabine, and had no duty or concern other than the delivery of the lumber f. o. b. cars at Sabine, as per its contract.

The other party to the shipping contract, the Railway Company, did not itself know of any other destination and had no arrangement or connection with any of the ships that ultimately carried the lumber in question out of Sabine."

2.

Appellee further moves the Court to supplement its further finding of fact by setting out substantially the following:

"Powell & Company purchased lumber from other mills in Texas, with which to supply its said sales in part; it did not know when any particular car or stick of lumber left Ruliff, into which ship or to what particular destination it would ultimately go, or on which sale it would be applied; this not being found out until its agent, Flanagan, inspected the invoice mailed to, and received by him 56 after shipment. Upon inspection of the invoice, he determined from the character of the lumber described whether it was suited for one cargo or the other. The lumber remained after arrival, in the slips or on the dock from one to thirty days until a ship chartered by Powell & Company arrived, when that Company selected out the lumber suited for that cargo, and shipped it forward to the destination for which Powell & Company intended it. This last shipment was entirely independent from the first."

3.

Appellee moves that the Court reform its finding of fact so as to strike out its conclusion that under the orders of the Commission a switching charge of \$1.50 per car could have been made by the Railroad for switching the lumber from the station to the docks.

The Court is clearly in error on this finding. A switching charge is never permissible and does not arise under the conditions existing in this case. The T. & N. O. Railroad Company performed a portion of the transportation services from Ruliff to Sabine and all points reached by the T. & N. O. around the station of Sabine by its switch tracks were treated by it as a part of Sabine, and were so by custom and under the law. A switching service is performed and a switching charge is due, as we understand, only when some railroad performs merely a terminal service, without having transported the freight from one station to another. For illustration: If the Santa Fe should switch from some point on its tracks in Beaumont a car load of freight originating at Beaumont, over to the T. & N. O. Railroad Company tracks at Beaumont, to be carried by the last named Company to Houston, the service of the Santa Fe would be a switching service for which it could make a switching charge; but if the Santa Fe should bring a car load of freight from San Augustine, a point on its line, to Beaumont, and there deliver the same car to the T. & N. O. for transportation to Houston, Texas, its final destination, it, the Santa Fe, could only charge the regular

freight rate from San Augustine to Beaumont; and could not add a charge for switching the car to the T. & N. O. tracks at
57 Beaumont for the switching, in the last named case, is a service due under the contract to carry to Beaumont and forward to the connecting carrier; and is not technically speaking a "switching service."

So, to forward the lumber to any point around Sabine, with which its tracks connected, and where it was in the habit of delivering or receiving freight, was a part of its duty under its contract to carry the freight from Beaumont to Sabine,—all such points being considered within the destination "Sabine."

4.

The Appellee moves that the Court reform its finding of fact to the effect that the proper interstate or export rate on shipments of lumber from Ruliff was ten cents instead of four cents.

While this finding only bears on the question of good faith, yet as we believe the Court erred in such conclusion, we ask that this error be corrected. The rate of ten cents was clearly superseded and canceled by later published rates, to-wit; by item 30 in amendment No. 22, to I. C. C. No. 1619, published by Texarkana & Fort Smith Railway Company fixing such rate at four cents.

5.

We submit that the Court erred in its finding of fact that W. A. Powell Company, Limited, availed itself of the additional free time allowed for export shipments and ask the Court to correct this finding of fact. The evidence shows that all cars were promptly unloaded. In this connection we further move, that the Court reform its finding of fact to the effect that Powell & Company, Limited, "regarded" the shipments in controversy as export shipments. We believe there is nothing in the record to justify the conclusion that Powell & Company entertained any opinion, one way or the other, on the subject. We believe the Court should simply, find what

58 Powell & Company did, as that is the only basis for an opinion as to what they thought. Furthermore, as we remember the record, it shows that prior to these particular shipments the defendants had charged, and Powell & Company had paid, only the four cent rate. (See Flanagan's and Walden's testimony.)

6.

The Appellee further moves that the Court reform its finding of fact where the Court uses the following language on page 7 of the opinion: "At the time this lumber was shipped it was destined by Powell & Company for export to some foreign port" etc. We believe this language is susceptible of misconstruction and move that the Court find substantially as follows: "At the time this lumber was shipped Powell & Company intended ultimately to ship it to some foreign port; that the particular destination of any particular por-

tion of the lumber was not fixed, although the intent that all of the lumber should ultimately be shipped to certain foreign ports did exist."

We want to submit a word in reply to first and second errors assigned in Appellants' motion for a rehearing and the statement supporting same.

Circular 1169 and corrected authorities Nos. 76, 80, 102, and 118 were also brought forward and published as effective in the Fifteenth Annual Report of the Commission published October 31, 1906. Circular 1169 fixed the particular and specific rate from Ruliff to Beaumont, and the corrected authorities named fixed the particular and specific rate from Beaumont to Sabine, and, under the operation of Rule 2, "governing the application of all rates", the specific and particular rate from Ruliff to Sabine was fixed at six and one-half cents (.06½) per hundred pounds; which controlled and over-rode the general provisions of authority No. 47.

This was a matter of law, too, for the Court to construe from the written orders and rules of the Commission.

We most earnestly insist that by no possibility could the question be one of fact, and that an inspection of the record makes it clear, beyond doubt, that the six and a half cents rate was the one applicable.

It would be most absurd to admit, as must be done, that the local rate from Ruliff to Beaumont was four cents, and from Beaumont to Sabine, two and one-half cents, and yet contend that, if the shipment should go through from Ruliff to Sabine, over the same route, it is twelve and one-half cents, in violation of Rule 2, and the most elementary principles governing rates.

We believe it would be an unnecessary consumption of time to answer appellants' motion further, and respectfully ask that the same be overruled, and the findings be reformed substantially as above indicated to guard against misconception.

Respectfully submitted,

GREER & MINOR,
Attorneys for Appellee.

Endorsed: No. 4430/4920. Texas & New Orleans R. R. Co. vs. Sabine Tram Company. Appellee's motion to reform findings of fact and its reply to Appellants' motion for rehearing. Filed in Court of Civil Appeals Jun- 16, 1909. H. L. Garrett, Clerk. Granted in part. Greer & Minor, Attorneys at Law.

Opinion Court Civil Appeals on Motion.

No. 4426/4920 and No. 4430/4920.

TEXAS & NEW ORLEANS COMPANY et al., Appellants,
 VS.
 SABINE TRAM COMPANY, Appellee.

Motion of Appellant- for Rehearing and Additional Findings of Fact and of Appellee to Correct Findings of Fact.

Upon Motion for Rehearing Filed by Appellant.

We are requested by both parties to correct our findings of facts in some particulars and for additional findings, and in deference to such request we desire to correct the findings made and to make additional findings, in what we regard, however, as unimportant and immaterial particulars, in no way affecting any of the questions presented and decided on this appeal. We find as follows:

Powell & Company purchased lumber from other mills in Texas, with which to supply its said sales in part; it did not know when any particular car or stick of lumber left Ruliff, into which ship or to what particular destination it would ultimately go, or on which sale it would be applied; this not being found out until its agent, Flanagan, inspected the invoice mailed to, and received by, him after shipment. Upon inspection of the invoice, he determined from the character of the lumber described whether it was suited for one cargo or the other. The lumber remained, after arrival, in the slips or on the dock from one to thirty days until a ship chartered by Powell & Company arrived, when that Company selected out the lumber suited for that cargo, and shipped it forward to the destination for which Powell & Company intended it.

We withdraw our finding that the rules and orders of the
 61 Texas Railroad Commission would allow a switching charge of \$1.50 per car on domestic shipments. The only testimony we can find on this point is that of witness Beard, General Freight Agent of the Texas & New Orleans Railroad Company that "the Texas rate for switching these cars would have been \$1.50 per car, that is, if Powell Company owned the docks; if it was shipped to the warehouse owned by consignees or his place of business." This testimony does not authorize the general finding on this point made by us.

The freight rate due under the tariff on file with the Interstate Commerce Commission and collected on these shipments was 15 cents per hundred pounds and under this rate, the services rendered without other charge included switching from Sabine station to the docks, seven days' free time exclusive of Sundays within which to unload the lumber from the car and thirty days' free storage of the lumber upon the docks at the wharves or in the slips belonging to the Texas & New Orleans Railroad Company. W. A. Powell & Company, Ltd., availed itself of all these services and privileges

which were stipulated for by the Interstate Commerce Commission tariff and included in the 15 cent rate charged on export freight.

There is not now and was not at the time these shipments moved, any local market for lumber at Sabine, the population of which place does not exceed fifty in number. Appellees have never done any local business at that point. For the year 1905 there was exported through the port of Sabine 14,667,870 feet of lumber; for the year 1906, 39,554,000 feet. The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine.

The motion for rehearing is overruled.

REESE,
Associate Justice.

62 Endorsed: No. 4426/4920 and 4430/4920. In Court of Civil Appeals, Galveston. Texas & New Orleans R. R. Co., et al., Appellants, vs Sabine Tram Company, Appellee. Opinion on motion of Appellant for Rehearing and Additional Findings of Facts and of Appellee to Correct Findings of Fact. Filed in Court Civil Appeals Jun- 29, 1909. H. L. Garrett, Clerk. Reese, Associate Justice. Recorded Recorded — 190.

63 *Order Submitting Motion for Rehearing.*

4426/4920.

T. & N. O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson.

Appellants' motion for rehearing submitted.

Order Submitting Motion to Reform Findings of Fact, &c.

4430/4920.

T. & N. O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson.

Appellee's motion to reform findings of fact &c. submitted.

Order on Motion for Rehearing.

4428/4920.

T. & N. O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson.

It is ordered that appellants' motion for rehearing be refused and motion to correct findings of facts and for additional findings of facts be granted in part.

Order on Motion to Reform Findings of Fact &c.

4430/4920.

T. & N. O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson.

It is ordered that appellee's motion to reform findings of fact &c. be granted in part.

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In Supreme Court of Texas.

TEX. & NEW O. R. R. Co. et al.

VS.

SABINE TRAM CO.

From Jefferson County, 1st District.

Judgment Supreme Court.

APRIL 20TH, 1910.

This day came on to be heard the application of Tex. & New O. R. R. Co. et al. for a writ of error to the Court of Civil Appeals for the First District and the same having been duly considered, it is ordered that said application be refused; that the Appellants Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company and their surety United States Fidelity & Guaranty Company pay all costs incurred on this application.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by the Supreme Court on application for writ of error in the above styled cause.

Witness my hand and the seal of said Court this the 13th day of May A. D. 1910.

[SEAL.]

F. T. CONNERLY, Clerk,
By J. S. MYRICK, Deputy.

Mo- for rehearing overruled May 11, 1910.

Endorsed: Application No. 6504. Tex. New O. R. R. Co. et al. vs. Sabine Tram Co. Copy of judgment in Supreme Court. Application for writ of error refused. Filed in Court Civil Appeals May 16, 1910. H. L. Garrett, Clerk.

85 In the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA & FORT SMITH RAILWAY COMPANY, Appellants,

vs.

SABINE TRAM COMPANY, Appellee.

Application for Writ of Error.

To Any Justice of the Supreme Court of the United States, or to the Chief Justice of the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston:

Petitioners, Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company, and United States Fidelity & Guaranty Company, represent that on the 27th day of May A. D., 1909, in the above entitled and numbered cause pending in the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston wherein Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company and none others are appellants and Sabine Tram Company and none others is appellee and the said United States Fidelity & Guaranty Company is surety on the supersedeas appeal bond of said Texas & New Orleans Railroad Company and said Texarkana & Fort Smith Railway Company, appellants a judgment was rendered and entered in favor of said Sabine Tram Company, appellee, and against petitioners, Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company; that thereafter on the 10th day of June,

66 1909, petitioners, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company, filed in said Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston their motion for a rehearing of said cause, which motion was on said day by said court overruled; that thereafter, to-wit, on the 23d day of June, 1909, petitioners, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company, filed their petition with the Supreme Court of the State

of Texas for a writ of error to said Court of Civil Appeals praying that the judgment of said court be reversed and rendered in petitioners' favor; that said petition for writ of error was by the Supreme Court of the State of Texas in all things overruled on the 20th day of April, A. D. 1910; that thereafter, to wit, on the — day of May, 1910, petitioners, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company, filed their motion for a rehearing in said Supreme Court, praying that its judgment denying a writ of error herein be set aside and that said writ of error be granted and upon hearing of said cause that the judgment of the Court of Civil Appeals herein be reversed and that the judgment herein rendered and entered against petitioners be reversed and rendered in their favor, which said motion for a rehearing was by the Supreme Court of the State of Texas on the 11th day of May, 1910, in all things overruled. That thereby said judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas of date May 27, 1909, became and is in all things a final judgment in favor of the Sabine Tram Company against petitioners, Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company.

That the Court of Civil Appeals for the First Supreme Judicial District of Texas is the highest court of the State of Texas in
67 which a decision in said suit could be had.

And petitioners say that they are aggrieved by the said judgment and the proceedings in said suit and that in the said judgment and proceedings had prior thereunto in said cause errors were committed to the prejudice of the petitioners, because they say that in said suit there was drawn in question the validity of a statute of or an authority exercised under the United States and said decision was against their validity and there was drawn in question the validity of a statute of the State of Texas and an authority exercised under said state on the ground of their being repugnant to the Constitution and laws of the State of Texas and said decision was in favor of their validity and there was in said suit titles, rights, privileges and immunities claimed under the Constitution and statutes of the United States and authorities exercised under the United States and said decision was against the titles, rights, privileges and immunities especially set up and claimed by petitioners under such Constitution, statute and authority as will more fully appear from the first amended original answer of petitioner Texas & New Orleans Railroad Company, and especially paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18 thereof and the first amended original of petitioner Texarkana & Fort Smith Railway Company in said cause; and as will further appear from petitioners' motion for a new trial in the District Court of Jefferson County herein and especially in paragraphs 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 20, 23 and 24 thereof; and as will further appear from the 4th, 5th, 6th, 7th, 8th, 9th, 12th, 13th, 14th, 15th, 16th, 19th, 20th, 21st, 22d, 23d, 24th and 25th errors assigned by petitioners in the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston, to which

court petitioners, Texas & New Orleans Railroad Company and
 Texarkana & Fort Smith Railway Company, appealed this
 68 cause from the judgment of the District Court of Jefferson
 County within and for the Six-ieth Judicial District of this
 state; and as will more fully appear from the motion for a rehear-
 ing filed by petitioners in said Court of Civil Appeals as herein-
 above alleged and especially the 10th, 13th, 14th, 15th, 16th, 17th,
 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 27th, 28th
 and 29th paragraphs thereof; and as will more fully appear from
 petitioners petition to the Supreme Court of Texas for writ of error
 to said Court of Civil Appeals herein and especially to the 5th, 6th,
 8th, 9th, 10th, 11th, 12th, and 13th specifications of error therein;
 and as will more fully appear from petitioners' motion for a rehear-
 ing on said application for a writ of error to the Supreme Court of
 the United States and especially in paragraphs 3, 4, 5, 6, 8, 9, 10,
 11, 12, 13, 16 and 17th thereof; and as will also more fully appear
 from the assignments of error filed herewith and which these peti-
 tioners pray will be read and taken as a part hereof.

Your petitioners refer to the assignments of error filed herewith
 and pray that the same be considered for the purposes of this peti-
 tion as a part hereof and further pray that a writ of error may be
 allowed and issued herein to the said Court of Civil Appeals for the
 First Supreme Judicial District of Texas which now has the record
 in this suit for the removal of said cause into the Supreme Court
 of the United States to the end that the errors in said judgment and
 proceedings in said cause may be duly corrected and full and speedy
 justice done to the parties aforesaid in this behalf and that the
 transcript of the record, proceedings and papers in said cause duly
 authenticated may be sent to the Supreme Court of the United
 States.

TEXAS & NEW ORLEANS RAILROAD
 COMPANY,
 TEXARKANA & FORT SMITH RAIL-
 WAY COMPANY,
 UNITED STATES FIDELITY & GUAR-
 ANTY COMPANY,

Petitioners,

69 By BAKER, BOTTS, PARKER & GARWOOD,
 GLASS, ESTES, KING & BURFORD,
Attorneys.

Allowed on this, the 27 day of May, A. D. 1910, the same to
 operate as a supersedeas.

R. A. PLEASANTS,
*Chief Justice of the Court of Civil
 Appeals for the First Supreme Judi-
 cial District of Texas.*

Endorsed: No. 4920 Texas & New Orleans Railroad Company,
 et al., Appellants, vs. Sabine Tram Company, Appellee. Application
 for writ of error. Filed in Court Civil Appeals May 27 1910. H.
 L. Garrett, Clerk.

Upon application of plaintiffs in error the time for filing the record in this cause is hereby extended for thirty days from this the 21st day of June, 1910.

R. A. PLEASANTS,
*Chief Justice, Court of Civil Appeals
 for First Supreme Judicial District
 of Texas.*

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Writ of Error.

THE UNITED STATES OF AMERICA, vs:

The President of the United States of America to the Honorable the Judges of the Court of Civil Appeals for the First Supreme Judicial District of Texas, Greeting:

Because in the record and the proceedings as also in the rendition of the judgment of a plea which is in the said, the Court of Civil Appeals for the First Supreme Judicial District of Texas, before you or some of you, being the highest court of said state in which a decision could be had in the said suit between the Sabine Tram Company, Defendant in Error, and Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company, Plaintiffs in Error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under the state on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision was in favor of their validity or wherein a title, right, privilege or immunity was claimed under the Constitution or a treaty or statute of or commission held or authority exercised under the United States and the decision was against the title, right, privilege or immunity set up or claimed under such Constitution, treaty, statute, commission or authority manifest error hath happened to the great damage of the Texas & New Orleans Railroad Company, the Texarkana & Fort Smith Railway Company and the United States Fidelity & Guaranty Company as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command

71 you, if judgment be therein given, that then and under your seal, distinctly and openly, you send the records and proceedings with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in said Supreme Court at Washington within thirty days from the date hereof that the records and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error which of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

United States, this the 27 day of May in the Year of Our Lord, one thousand, nine hundred and ten.

[SEAL.]

C. DART,

*Clerk of the Circuit Court of the United
States for the Southern District of Texas.*

[SEAL.]

By G. PREDECKI, Deputy.

Allowed:

[SEAL.]

R. A. PLEASANTS,

*Chief Justice of the Court of Civil
Appeals for the First Supreme
Judicial District of Texas.*

Endorsed: No. 4920. Texas & New Orleans Railroad Company, et al., Plaintiffs in Error, vs. Sabine Tram Company, Defendant in Error. Writ of Error—Original. Issued May 27-1910, C. Dart, Clerk, By G. Predecki, Deputy. Filed in Court Civil Appeals May 27 1910. H. L. Garrett, Clerk.

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Original Citation in Error.

THE UNITED STATES OF AMERICA, ss:

To Sabine Tram Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's office of the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston wherein the Texas & New Orleans Railroad Company, the Texarkana & Fort Smith Railway Company and the United States Fidelity & Guaranty Company are plaintiffs in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected and why a speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this the 27 day of May in the Year of Our Lord, one thousand, nine hundred and ten.

R. A. PLEASANTS,

*Chief Justice of the Court of Civil
Appeals for the First Supreme Judi-
cial District of Texas.*

Attest with the seal of the Circuit Court of the United States for the Southern District of Texas, this the 27th day of May, A. D. 1910.

[SEAL.]

C. DART,

*Clerk Circuit Court of the United
States for the Southern District of Texas,
By G. PREDECKI, Deputy.*

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Due service of the above and foregoing citation is hereby acknowledged, this the 31st day of May, A. D. 1910.

SABINE TRAM COMPANY,
By GREER & MINOR,
Per GEORGE C. GREER, *Attorneys.*

Endorsed: No. 4920 Texas & New Orleans Railroad Company, et al., Plaintiffs in error, vs. Sabine Tram Company, Defendant in error. Original Citation in Error. Issued May 27-1910, C. Dart, Clerk, By G. Predecki, Deputy. Filed in Court Civil Appeals Jun-2 1910. H. L. Garrett, Clerk.

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Writ of Error Bond.

Know all men by these presents: That we, Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company, as Principals, and ——— and ——— as Sureties, are held and firmly bound to the Sabine Tram Company in the full and just sum of Ten Thousand (\$10,000.00) Dollars to be paid to the Sabine Tram Company, its successors or assigns, for which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and assigns jointly and severally by these presents.

Sealed with our seals and dated this the 27th day of May, A. D., 1910.

Whereas, lately at a term of the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas in a suit pending in said court between the Sabine Tram Company and the Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company a judgment was rendered in favor of the said Sabine Tram Company and against the said Texas & New Orleans Railroad Company, the Texarkana & Fort Smith Railway Company and against the United States Fidelity & Guaranty Company, surety on the Supersedeas bond of appeal of said Texas & New Orleans Railroad Company and said Texarkana & Fort Smith Railway Company and the said Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company having obtained a writ of error and filed a copy thereof in the Clerk's office in the said Court to reverse the judgment in the aforesaid suit and a citation directed to the Sabine Tram Company, citing and admonishing said Company to be and appear at the Supreme Court of the United States to be holden at Washington within thirty days from the date thereof;

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Now the condition of the above obligation is such that if the said Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea

good, then the above obligation to be void; otherwise, to remain in full force and effect.

TEXAS & NEW ORLEANS RAILROAD
COMPANY,
TEXARKANA & FORT SMITH RAILWAY
COMPANY,

UNITED STATES FIDELITY & GUAR-
ANY COMPANY, *Principals,*

By BAKER, BOTTS, PARKER & GARWOOD,
HIRAM GLASS, *Attorneys.*

JAS. A. BAKER, *Surety.*

W. B. CHEW, *Surety.*

The above and foregoing bond approved this, the 27th day of May, A. D. 1910, same to operate as a supersedeas.

R. A. PLEASANTS,
*Chief Justice of the Court of Civil Appeals
for the First Supreme Judicial District of Texas.*

Endorsed: No. 4920. Texas & New Orleans Railroad Company et al., Appellants, vs. Sabine Tram Company, Appellee. Writ of Error Bond. Filed in Court Civil Appeals May 27, 1910. H. L. Garrett, Clerk.

76 *Piffs in Error's Assignments of Error.*

In the Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Plaintiffs in Error,

vs.

SABINE TRAM COMPANY, Defendants in Error.

Assignments of Error.

Now come the plaintiffs in error, Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company, and on writ of error from the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, make and file the following assignments of error and say that in the records and proceedings in said cause the Court of Civil Appeals for the First Supreme Judicial District of Texas erred in this:

I.

The Court of Civil Appeals erred in holding that the shipments in controversy were intrastate commerce and subject to the rates,

rules and regulations of the Railroad Commission of the State of Texas and in entering judgment for the sum of \$1788.00, the difference between the freight charges under the rates, rules and regulations of the Railroad Commission of Texas and the interstate rates applicable thereto under tariffs of plaintiffs in error regularly filed with the Interstate Commerce Commission and legally published, with six per cent. interest on said shipment from January 1, 1907, and also for penalties in the sum of \$3,000.00, being twenty-

77 four penalties of \$125.00 each assessed under the statutes of the State of Texas as a penalty for charging a freight rate greater than that prescribed by the Railroad Commission of Texas; and in failing to find that as a matter of law the shipments in controversy herein constituted and were interstate and foreign commerce shipped from a point within a state through Sabine, a port of transshipment, to a foreign country not adjacent to the United States.

II.

The Court of Civil Appeals erred in overruling and failing to sustain the sixth assignment of error herein which is as follows:

"The court erred in failing to direct a verdict in favor of the defendants herein and in failing and refusing to give Special Charge No. 1 requested by defendants directing the jury to return a verdict in favor of the defendants and each of them, for that the several shipments declared upon by defendant in error, plaintiff in the court below, were not intrastate commerce subject to the rules and regulations of the Railroad Commission of Texas, but were each and all foreign commerce moving from a point within the State of Texas in continuous and unbroken transit through a port of transshipment to points in Europe, being foreign countries not adjacent to the United States and such shipments as such foreign commerce were not subject to the rates, rules and regulations of the Railroad Commission of Texas or to the laws of said state, but were each and all subject to the rates, rules and regulations applicable thereto which had theretofore been filed with the Interstate Commerce Commission and legally published and established, the freight rates collected by plaintiffs in error, being the rates so legally established and applicable thereto."

III.

The Court of Civil Appeals erred in overruling and failing to sustain the fifteenth assignment of error herein which is as follows:

"The court erred in failing and refusing to give Special Charge No. Six asked by the defendants to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company situate adjacent to the station of Sabine, Texas, on the road of the latter company were intended for export to foreign countries other than
78 Mexico and that the rates charged upon the shipments involved in this controversy were collected under and in ac

cordance with the interstate tariff so filed and that if they believed from the evidence that the defendant, the Texas & New Orleans Railroad Company, and its agent acting in that behalf believed in good faith and acting upon reasonable grounds for that belief that the shipments in controversy were foreign shipments and intended for export to foreign countries other than Mexico, then in that event they should find for the defendant upon the issue of penalties thereto submitted by the court."

IV.

The Court of Civil Appeals erred in overruling and failing to sustain the sixteenth assignment of error herein which is as follows:

"The court erred in failing and refusing to give defendants' Special Charge No. Seven to the effect that defendants having prior to the shipments in controversy duly and legally established, filed with the Interstate Commerce Commission and published tariffs of rates covering shipments of lumber from Ruliff, Texas, to Sabine, Texas, over their respective lines in carload lots for export to foreign countries other than Mexico and that the freight charges herein collected were charged and collected under and in pursuance of such tariffs and that the shipments involved actually moved in carload lots in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment, and were thence actually exported to Europe; that as a matter of law it was the duty of defendants to charge and collect no other freight charges than those prescribed in the tariffs aforesaid and if they had have charged any other rate than that prescribed, they would have been subjected to penalties prescribed in the Act to Regulate Interstate and Foreign Commerce and the acts amendatory thereof; and that regardless of whether the lumber transported constituted foreign or interstate commerce or intrastate or domestic commerce, it was the defendants' duty to apply the tariff so established and no other tariff and that, therefore, they should find a verdict for the defendant both upon the issue of actual overcharge demanded and the penalties sued for."

V.

The Court of Civil Appeals erred in overruling and failing to sustain the Nineteenth assignment of error herein which is as follows:

"The court erred in rendering and entering a judgment for any amount against the defendants herein for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce moving from a point within the United States through a port of transshipment to foreign countries and that these defendants herein prior to said shipments had legally established, filed with the Interstate Commerce Commission and published schedules and tariffs of rates applicable to such shipments and that the rates charged and collected by defendants were the rates so established in said tariffs and schedules filed and published and were the legal rates applicable thereto."

VI.

The Court of Civil Appeals erred in overruling and failing to sustain the twentieth assignment of error herein which is as follows:

"The verdict of the jury and the judgment of the court is erroneous, because the Constitution of the United States, and especially Article One, section eight thereof and the act of Congress commonly known as the Interstate Commerce Act approved February 4, 1887, and acts amendatory thereof, authorize and permit the defendants to charge and collect the rates named in the tariffs promulgated and filed with the Interstate Commerce Commission and said verdict and judgment is a denial of that right so claimed by the defendant under said Constitution and laws of the United States."

VII.

The Court of Civil Appeals erred in overruling and failing to sustain the twenty-second assignment of error herein which is as follows:

"The Court erred in holding and charging the jury as a matter of law that the plaintiff was entitled to recover five penalties amounting in the aggregate to not less than \$625.00 nor more than \$2500.00."

VIII.

The Court of Civil Appeals erred in overruling and failing to sustain the twenty-third assignment of error herein which is as follows:

"The court erred in permitting the recovery of penalties in any amount herein and the verdict and judgment rendered herein is erroneous in finding for plaintiff upon the issue of penalties herein in this: That the uncontradicted testimony shows that the shipments by plaintiff declared upon moved in a continuous and unbroken journey from Ruliff, Texas, the point of origin, through Sabine, a port of trans-shipment, to a foreign port; that prior to said shipments defendants had promulgated and filed with the Interstate Commerce Commission tariffs of rates, applicable to such movements and that the defendants actually applied such rates to such movements; that defendants under and by virtue of the Act to Regulate Commerce approved February 4, 1887, and acts amendatory thereof and the Act of Congress approved February 19, 1903, commonly known as the Elkins Act and acts amendatory thereof, were compelled under the threat of severe penalties to apply said tariff and no other tariffs and that under the Railroad Commission Act of Texas, the charging and receiving of freight charges in excess of the rates prescribed by said Commission is punishable by a penalty of not less than \$125.00 not more than \$500.00 and that to compel these defendants at their peril to decide, as a matter of law, which was the correct rate and to punish them by the infliction of said penalties for a mistake of law as to which was applicable is to deprive them of their property without due process of law and deprive them of the equal protection of the law, con-

trary to the Fourteenth Amendment of the Constitution of the United States."

IX.

The Court of Civil Appeals erred in overruling and failing to sustain the twenty-fourth assignment of error herein which is as follows:

"The court erred in failing and refusing to direct a verdict in favor of defendants, because the evidence shows without dispute that when said lumber mentioned in plaintiff's petition started on its journey from Ruliff, Texas, same was destined to a foreign country and constituted foreign commerce and not intrastate commerce; that it was in fact shipped from Ruliff, Texas, a point within the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, to a foreign country and was not subject to or controlled or affected by the rates, rules or regulations of the Railroad Commission of Texas and the enforcement of said rates, rules and regulations of the Railroad Commission of Texas, in respect to said shipment is, therefore, violative of section eight, article one of the Constitution of the United States and the act commonly known as the Interstate Commerce Act, approved February 4, 1887, and acts amendatory thereof."

X.

The Court of Civil Appeals erred in overruling and failing to sustain the twenty-fifth assignment of error herein which is as follows:

"The court erred in instructing the jury to find in favor of plaintiff for any sum as penalties and in entering judgment for the sum of \$1788.00 as penalties. Article 4575 of the Revised Statutes of Texas under which said penalties were allowed and adjudged is unconstitutional and void and is violative of and in contravention of section thirteen, Article one of the Constitution of Texas which provides that no excessive fines shall be imposed nor cruel or unusual punishment inflicted and is also in contravention of the Fourteenth Amendment of the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law nor denied the equal protection of the law within the jurisdiction of the state; that the infliction of penalties of not less than \$125.00 nor more than \$500.00 for each overcharge is an excessive fine and deprives the defendants of the equal protection of the law and demands their property without due process of law."

XI.

The Court of Civil Appeals erred in overruling and failing to sustain the fifth assignment of error herein which is as follows:

"The court erred in sustaining Special Exception No. 7 contained in plaintiff's first supplemental petition filed herein January 20, 1908, to paragraph 18 of the first amended original answer of defendant, the Texas & New Orleans Railroad Company, as follows: 7. Plaintiff further specially excepts to the 18th paragraph of said

answer and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railroad Commission of Texas in an action between the Sabine

Tram Company, plaintiff herein, a private party, and the
83 railway companies affected by said rates in violation of

Article 4584 of the Revised Statutes of the State of Texas, same being section five of an act passed by the Twenty-second Legislature of the State of Texas, entitled An Act to Establish a Railroad Commission for the State of Texas, etc., and appearing on page 58 of the Acts of 1891, for the reason that in an action to recover penalties for an alleged violation of the rates, orders, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States."

XII.

The Court of Civil Appeals erred in reforming the judgment of the District Court of Jefferson County which rendered judgment against plaintiffs in error, for the sum of \$1,788.00 with interest at the rate of six per cent. thereon from January 1, 1907, for alleged overcharges and for \$1,785.00 as penalties, and rendering judgment against plaintiffs in error for said sum of \$1,785.00 and interest as overcharges and for \$3,000.00 as penalties for said alleged overcharges, for the reason that the several shipments by plaintiffs declared upon were interstate and foreign commerce and as such were not subject to the rates, rules and regulations of the Railroad Commission of the State of Texas and that thereby these plaintiffs in error have been deprived of their rights, privileges and immunities under the Constitution and laws of the United States and especially of section eight, Article 1 of the said Constitution which provides that "Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes,"

and of the act of Congress entitled "An Act to Regulate
84 Commerce Approved February 4, 1887, and Acts Amendatory thereof," and said Court of Civil Appeals erred in holding that the several shipments were intrastate and domestic shipments, subject to the rates, rules and regulations of the Railroad Commission of Texas and in holding that plaintiffs in error were guilty of extortion under the laws of the State of Texas for demanding and receiving for such shipments the rates which legally applied thereto as foreign commerce in accordance with tariffs regularly filed with the Interstate Commerce Commission and legally established and published.

Wherefore, plaintiffs in error pray that the judgment of the Court of Civil Appeals for the First Supreme Judicial District of Texas be reversed and that this cause be remanded for such other proceedings as law and justice may require.

TEXAS & NEW ORLEANS RAILROAD COMPANY,
 TEXARKANA & FORT SMITH RAILWAY COMPANY,
 UNITED STATES FIDELITY & GUARANTY COMPANY,

Plaintiffs in Error,

By HIRAM GLASS, GLASS, ESTES & KING &
 BURFORD,
 H. M. GARWOOD, BAKER, BOTTS, PARKER &
 GARWOOD,

Attorneys.

Endorsed: No. 4920. Texas & New Orleans Railroad Company, et al., Plaintiffs in Error vs. Sabine Tram Company, Defendant in Error. Assignments of Error. Filed in Court of Civil Appeals May 27, 1910. H. L. Garrett, Clerk.

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Agreement.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al., Plaintiffs in Error,

vs.

SABINE TRAM COMPANY, Defendant in Error.

Agreement.

It is mutually agreed by and between the parties hereto that the original statement of facts herein may be transmitted with the record in this cause to the Supreme Court of the United States and that the Clerk of the Court may file the same and it may be considered with said transcript without being printed in the printed record as made up by said Clerk, the purpose of this agreement being that notwithstanding the said statement of facts has been incorporated in the record transmitted from the Court of Civil Appeals of the First Supreme Judicial District, inspection of the original documents in said original statement of facts may be of service to Court and Counsel upon the submission of this cause, it being further agreed that any portion of said original statement of facts thus transmitted may

be made a part of the printed record in said cause if either party hereto shall demand.

TEXAS & NEW ORLEANS RAILROAD
COMPANY,
TEXARKANA & FORT SMITH RAILWAY
COMPANY,

Plaintiffs in Error.

By BAKER, BOTTS, PARKER & GARWOOD,
GLASS, ESTES, KING & BURFORD,

Attorneys.

SABINE TRAM COMPANY,
By GREER & MINOR,
Per GEORGE C. GREER,
Attorneys.

86 Endorsed: No. 4920. Texas & New Orleans Railroad Company et al., Plaintiffs in Error, vs. Sabine Tram Company, Defendant in Error. Agreement. Filed in Court of Civil Appeals Jun- 2, 1910. H. L. Garrett, Clerk.

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** Caption.*

Be it remembered that at a regular term of the Honorable District Court of the 60th Judicial District, held in and for the County of Jefferson, and State of Texas, begun on the 2nd day of December, A. D. 1907, and ending on the 25th day of January, A. D. 1908, there came on for trial, before the Honorable L. B. Hightower, Jr., Judge presiding, the following styled and numbered cause, to-wit:

No. 6071.

SABINE TRAM COMPANY, Plaintiff,

VS.

TEXAS & NEW ORLEANS RAILROAD Co. et al., Defendants,

when the following proceedings were had, to-wit:—

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Plff's Amended Original Petition.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

T. & N. O. RAILROAD Co. et al.

To the Honorable L. B. Hightower, Jr., Judge of said Court:—

Now comes Sabine Tram Company, Plaintiff herein, and under leave of court first had an-obtained files this its amended original

petition in lieu of its original petition filed herein on the 18th day of February, 1907, and complains of the Texas & New Orleans Railroad Company, and the Texarkana & Fort Smith Railway Company, known hereinafter as defendants and respectfully represents unto your Honor.

That the plaintiff is a corporation organized under the laws of the State of Texas having its principal office at Beaumont in Jefferson County, Texas.

That the defendant Texas & New Orleans Railroad Company is a railroad corporation, organized as such under the laws of the State of Texas, and having its principal office at Houston, in Harris County, Texas, with a local agent, F. L. Sheeks, residing in Jefferson County, Texas, upon whom service may be obtained; and for convenience said defendant will be designated herein as the T. & N. O. defendant.

That the Texarkana & Fort Smith Railway Company is likewise a railroad corporation, organized as such under the laws of the State of Texas, and having its principal office at Texarkana, in Bowie County, Texas, with T. J. De Nief as its local agent, residing in Jefferson County, Texas, upon whom service may be obtained; and for convenience said defendant will be called and designated herein as the Fort Smith defendant.

That each of said defendants is and was at all the dates herein complained of organized and operating as a railroad corporation and common carrier, under the laws of the State of Texas. As such the T. & N. O. defendant owns and operates, and did, at said dates own and operate a line of railroad, extending from Sabine, a point
89 in Jefferson County, Texas, northerly through Sabine Pass to Beaumont, Texas, and thence on Northward Westward and Eastward through Jefferson County, Texas, connecting at Beaumont with the railroad line of the Fort Smith defendant; and as such the Fort Smith defendant owns and operates, and did, at said dates and times herein complained of, own and operate, a line of railroad extending from Port Arthur, in Jefferson County, Texas, northeasterly through Jefferson, Orange and Newton Counties in said State, and to and through Beaumont in Jefferson County Texas, and on Northeasterly to and through Ruliff in Newton County, Texas, near which plaintiff's saw mill is situated, said line between Ruliff and Port Arthur being entirely within Texas.

That said railway lines now connect and at all the times of the occurrence of the things hereinafter complained of did connect at Beaumont, Texas, forming there connecting lines for the interchange of freight and passengers between one another, receiving and delivering freight and passengers from and to one another and transporting the same for one another. That the Fort Smith defendant now publishes, and at all times when all the unlawful exactions hereinafter complained of were demanded and collected did publish and the Railroad Commission of Texas has and at all of said times had fixed, and established and prescribed tariffs or rates for which said defendant was at all of the times bound to accept and transport freight or

property, and particularly lumber in car load lots of the minimum weight of 24,000 pounds, from points on its lines North of Beaumont to Sabine River, to Beaumont and particularly from Ruliff in Newton County, Texas, to Beaumont, Texas. That the T. & N. O. defendant likewise now publishes and at all of the times when the unlawful exactions hereinafter complained of were demanded and collected, and the Railway Commission of Texas has and at all of said times had fixed, established and prescribed tariffs or rates
90 for which said defendant was at all of said dates bound to accept and transport freight or property, particularly lumber in carload lots, minimum weight, of 24,000 pounds, from one point on its line to another, and particularly from Beaumont in Jefferson County to Sabine in said Jefferson County.

That plaintiff is a lumber manufacturing corporation, owning and operating a saw mill plant located near or at Ruliff, Texas, on the railway line of the Fort Smith defendant, in Newton County, Texas, at which it manufactures lumber, and from which it, in part, ships the same over the lines of the defendants to points in Texas, and elsewhere.

That prior to any of the transactions herein complained of, that is prior to August 1st, 1906, the Railroad Commission of Texas fixed and established as the legal or commission railroad rate applicable to and over the line of the Fort Smith defendant from Ruliff, Texas to Beaumont, Texas, for the transportation of lumber in carload lots, minimum weight per carload of 24,000 pounds of four cents per hundred pounds from Ruliff to Beaumont, Texas. A schedule of said rate and a certified copy thereof was duly delivered to said defendant at its principal office in this State and to the agents of said Company in this State as prescribed by Revised Statutes Art. 4567. That likewise prior to any of the transactions herein complained of that is prior to August 1st, 1906, the Railroad Commission of the State of Texas fixed and established as the legal or commission railroad rate applicable to and over the line of the T. & N. O. defendant from Beaumont, Texas to Sabine, Texas for the transportation of lumber in carload lots, minimum weight per carload of 30,000 pounds of 2½ cents per hundred pounds from Beaumont, to said Sabine over the line of said T. & N. O. defendant.

A schedule of said rate and a certified copy thereof was duly delivered to said defendant at its principal office in this State
91 and to the agents of said Company in this State as prescribed by Revised Statutes Art. 4567.

That the aforesaid rates respectively applicable to each of said defendants between said respective points were each the established and published commission rate prevailing at all times herein referred to, and for which compensation said defendants were respectively bound to receive and transport lumber in car load lots of the minimum of 24,000 pounds between said points on their respective lines when the defendants demanded and collected the over charges and committed and were guilty of the extortions and discriminations herein complained of.

That at various dates between September 1st, 1906, and November

1st, 1906, (the latter date included) the plaintiff shipped from Ruliff, Texas, to Sabine, Texas, over the said connecting lines of defendants (that is via the railway line of the Fort Smith defendant to Beaumont and thence via the railway line of the T. & N. O. defendant to Sabine, Texas) consigned to itself, "notify W. A. Powell Co." thirty three (33) car loads of lumber, each car weighing above said minimum, and all together weighing in the aggregate, 2,104,000 pounds.

That said lumber was tendered to, and accepted by the Fort Smith defendant as a common carrier at Ruliff, Texas, for shipment to Sabine, Texas, via and over said connecting lines, and was so received and transported by defendants as common carriers; the Fort Smith defendant transporting each of said car loads to Beaumont and there delivering to the connecting line of the said T. & N. O. defendant, which received and transported the same thence to destination at Sabine, Texas.

That said shipments were each from a point in Texas to a point in Texas and over said two connecting lines entirely within Texas, and were in all respects intra state shipments, the actual initial point in each case being Ruliff, Texas, and destination point being Sabine, Texas. That in case of each such car load of lumber plaintiff tendered same as freight to the Fort Smith Defendant at Ruliff, Texas, for transportation to Sabine, Texas, and said defendant received same as a common carrier for said purpose and issued a bill of lading to plaintiff, showing the consignor to be Sabine, Tram Company (plaintiff) and the consignee to be Sabine Tram Company, "Notify W. A. Powell Co." and acknowledging receipt of same for said purpose; and delivered same at Beaumont, Texas, to the T. & N. O. defendant for transportation by it, as a connecting carrier, thence to Sabine, Texas, which was so received and transported by the latter defendant; the defendants acting and operating together jointly, as such connecting carriers, for the transportation of each of said car loads of lumber from said origin to said destination, for which joint service they unlawfully and wrongfully demanded and collected of the plaintiff a joint rate fifteen (15) cents per hundred pounds on each of said car loads of lumber.

That said shipments being entirely within the State, that is intra-state, the said Commission rates hereinbefore set out, that is to say, 4 cents per hundred pounds from Ruliff to Beaumont, Texas, over the line of the Fort Smith defendant and 2½ cents per hundred pounds from Beaumont to Sabine, Texas, over the line of the T. & N. O. defendant were the legal rates applicable to same, fixed, established and promulgated by the Railroad Commission of Texas, which the defendants had the right to demand and collect of plaintiff as prescribed by General Rule No. 2, page 65 of the 15th Report of the Railroad Commission of Texas in connection with Circular No. 1169 and Authority No. 76, which general rule is as follows:

"The rate between two given points shall not in any case exceed the sum of the rates applying between such given points and a point intermediate."

Therefore, the said defendants were bound to transport the said lumber in carload lots from Ruliff in Newton County, Texas, over the line of the Fort Smith defendant to Beaumont and thence over the line of the T. & N. O. defendant from Beaumont to Sabine for the aggregate of the rate over the Fort Smith defendant from 93 Ruliff to Beaumont, and the rate of the T. & N. O. defendant from Beaumont to Sabine, that is to say for $6\frac{1}{2}$ cents per hundred pounds, but that in truth and fact they combined together and jointly demanded, or one demanded for itself and the other, for such joint service the rate of 15 cents per hundred pounds, for and on each carload, which illegal rate they wrongfully and illegally demanded and collected from plaintiff.

That the T. & N. O. defendant made out the expense bills on said shipments, demanding said illegal joint rate, which plaintiff in each case paid under protest, said expense bills were intended to and did cover said illegal joint charge and being collected by T. & N. O. defendant, the same was divided between defendants in proportions so that each received largely in excess of the legal rate allowed it by law, per hundred yards. Plaintiff is advised and believes and therefore alleges on information and belief that the proportion was about five (5) cents to the T. & N. O. defendant and ten (10) cents to the Fort Smith Defendant.

That defendants first demanded 6 cents per hundred pounds and rendered expense bills at said rate, on said shipments shown in Exhibit A as having been made on September 7, 8, 10, 11 and 15; but afterwards demanded and collected and rendered expense bills for, said full 15 cents rate on said shipments, as well as all others.

That in such illegal demands, overcharges and collections said T. & N. O. defendant acted for itself and the Fort Smith defendant with the consent and authorization of the latter, who authorized, required and ratified the said illegal acts, accepting its said illegal part of said joint rate with full knowledge of all the facts.

That an itemized statement of each of said shipments, showing the date thereof, the consignor, the consignee, the car in which shipment was made, the weight of the car load of lumber, the rate per hundred pounds demanded and collected by defendants and 94 each of them from plaintiff, the amount collected the rate of overcharge, and the amount of the overcharge, is hereto attached and marked Exhibit "A," and prayed to be considered a part hereof.

That by reason of said overcharges the defendants and each of them demanded and collected from plaintiff and the latter paid under protest to defendants, that is to the T. & N. O. defendant for itself, and the Fort Smith defendant for said joint service, a total overcharge on said shipments of \$1788.33, and in case of each of said shipments, there being thirty-three (33) separate shipments, as shown by said exhibit, defendants and each of them practiced and was guilty of an extortion by demanding and collecting said overcharge of eight and one-half ($8\frac{1}{2}$) cents per hundred pounds, for which they and each of them are liable, under the laws of the State of Texas, to a penalty of five hundred (\$500.00) dollars for each act

of extortion, there being thirty-three (33) separate acts of extortion, rendering defendants and each of them liable for the total sum of \$16500.00 in statutory penalties for the recovery of which, as well as for said overcharges amounting to \$1788.33 plaintiff sues.

That plaintiff in delivering said lumber at Sabine, Texas, was fulfilling its contract with W. A. Powell Company, Ltd., to sell to said W. A. Powell Company, Ltd., said lumber at a fixed price delivered at said point; under which plaintiff had agreed and was bound to pay the freight thereon. For convenience, however, said Powell Co. acting as the agent of plaintiff paid for plaintiff said freight (under protest, however) advancing same on plaintiff's account, which was repaid by plaintiff to Powell Company, Ltd.

That as to all of said car loads so shipped, plaintiff was liable, as defendants well knew, for the said legal freight charges thereon at the rate of six and one-half (6½) cents per hundred pounds, which plaintiff offered and always stood ready to pay; each of said car loads complying in all respects with the Commission requirements for carrying said rate, and being an intra-state shipment.

Plaintiff has notified said defendants of said overcharges
95 and demanded repayment of same which the defendants have failed and refused to pay, or any part thereof.

That by reason of said unlawful exactions and extortions by said defendant, and by virtue of the statutes of this State in such cases made and provided the said defendants and each of them became indebted to the plaintiff in the amount of said overcharges, to-wit, the sum of \$1788.33, and the amount of said penalties, to-wit, the sum of \$16,500.00, but to pay the same or any part thereof, though often demanded the said defendants, and each of them have hitherto failed and refused and still do refuse to pay the same or any part thereof to plaintiff's great damage as aforesaid.

That if plaintiff is mistaken in alleging that the shipment of each car was a separate act of extortion, then it says that at any rate the shipments on different dates were distinct and separate acts, being separately tendered to, and received by, the Fort Smith defendant. That the collection of said overcharges for such separate shipments so estimated would constitute twenty-six (26) separate acts of extortion for which defendants and each of them would be liable for said statutory penalties at the rate of \$500.00 for each such extortion. And if it be held that there were only twenty-six (26) separate acts of extortion, then by reason of the said unlawful exactions and extortions by said defendants and each of them, and by virtue of the laws of this State in such cases made and provided, the said defendants and each of them became indebted and bound to pay plaintiff the amount so illegally exacted and extorted from it, to-wit, the sum of \$1,788.33 and the further sum of \$13,000, for said statutory penalties at the rate of \$500.00 for each of said acts of extortion.

Wherefore, premises considered, said defendants having heretofore been cited to trial and having answered herein, plaintiff prays that upon final hearing it have judgment against said defendants and each of them to the amount of all of said overcharges and for all

98 said statutory penalties based upon each car's constituting a separate shipment and extortion and for legal interest thereon as above demanded; and in the alternative, if not permitted to recover penalties for each car as a separate act for such penalties for at least twenty-six (26) separate acts of extortion or such number as the court may find that the defendants have been guilty of, for interest and costs of suit, and generally for all such relief in law and equity as plaintiff may be entitled to receive.

GREER, MINOR & MILLER,
Attorneys for Plaintiff.

Petition endorsed: "No. 6071. Sabine Tram Co. vs. T. & N. O. R. R. Co., et al. Plaintiff's amended original petition. Filed Sep. 18, 1907. B. Boykin, C. D. C. Jefferson County, Tex. By Joe Cotnam, Deputy."

Date.	Cur.	Consignee.	Weight.	R. per 100 lbs.	Amt.	R. overcharge.	Amt. over-charged.
1906.		Sabine Tram Co. notify W. A. Powell Co.					
Sept. 7	T. & F. S.	21087	40,000	15c.	60.00	84.	34.00
" 8	K. C. S.	21189	42,900	"	64.35	"	30.46
" 10	"	21639	60,900	"	100.35	"	56.99
" 11	"	25187	58,800	"	88.20	"	49.98
" 11	"	24751	62,000	"	93.00	"	52.70
" 13	S. P.	59100	62,100	"	93.15	"	52.78
" 13	T. C.	3011	40,000	"	60.00	"	34.00
Oct. 3	G. H. & S. A.	1140	40,000	"	60.00	"	34.00
" 4	K. C. S.	25197	84,300	"	126.45	"	71.65
" 4	"	29006	77,400	"	116.10	"	63.79
" 5	T. & N. O.	3174	53,000	"	83.40	"	47.20
" 5	S. P.	55507	48,000	"	72.90	"	41.31
" 6	K. C. S.	21494	62,100	"	93.15	"	52.78
" 7	"	24317	62,500	"	93.76	"	53.12
" 8	"	23288	63,300	"	94.95	"	53.80
" 11	G. H. & S. A.	40250	78,300	"	117.45	"	66.55
37							
Oct. 11	M. L. & T.	21117	91,200	15c.	136.90	84c.	77.52
" 13	F. S. & W.	5667	72,600	"	108.90	"	61.71
" 13	L. W.	15704	52,400	"	78.60	"	44.54
" 17	S. P.	78909	82,400	"	123.60	"	70.04
" 17	L. W.	5826	61,200	"	91.80	"	52.02
" 18	H. & T. C.	136 & 51	124,100	"	186.15	"	105.48
" 19	{ S. A. 4196 } { S. W. 5327 }		119,500	"	179.25	"	101.57
" 20	M. L. & T.	21298	93,500	"	140.25	"	70.47
" 22	F. S. & W.	5447	78,400	"	117.60	"	66.64
" 23	L. C.	97758	81,900	"	122.85	"	69.61
" 24	{ M. L. & T. 5105 } { T. & N. O. 20861 }		141,100	"	211.65	"	119.93
" 26	H. & W. T.	3532	48,000	"	72.00	"	40.80
" 31	H. & T. O.	408	47,100	"	70.65	"	40.03
"	L. W.	20082	65,900	"	98.70	"	55.93
Total cars.....	33		2,104,000		3,156.00		1,788.33

That the date of the bill of lading issued by the Fort Smith defendant for each of said carloads was about the same as date given above, except in the following instances, where the date of the bill of lading was as follows, viz: T. & F. S. 21037, Sept. 9th, 1906; K. & C. S. 25187 Sept. 12th, 1906; S. P. 55507, Oct. 2nd, 1906; K. C. S. 21494 Oct. 5th, 1906; K. C. S. 24517 Oct. 6th, 1906; F. S. & W. 5667 Oct. 15th, 1906; L. W. 15704 Oct. 15, 1906; S. P. 78809 Oct. 16th, L. W. 5826 Oct. 15th, 1906; M. L. & T. 21226 Oct. 22nd, 1906; Ft. S. & W. 5447 Oct. 15th, 1906; I. C. 97758 Oct. 22nd, 1906; M. L. & T. 5105 T. & N. O. 20361 Oct. 21st, 1906; H. & T. C. 403, Nov. 1st, 1906; L. W. 20032 Nov. 2nd, 1906:

Original Answer of T. & N. O. Ry. Co.

Suit pending in the District Court of Jefferson County, Texas,
60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXARKANA & FT. SMITH RY. CO. & TEXAS & NEW ORLEANS
RAILROAD COMPANY.

98 To the Honorable L. B. Hightower, Judge of said Court:

Comes now the defendant, Texas & New Orleans Railroad Company, and appearing herein for the purpose of this plea only, respectfully shows to the court that this Honorable Court has no jurisdiction over the alleged cause of action declared herein in so far as plaintiff seeks to recover of this defendant alleged overcharge in the nature of damages growing out of the alleged violation by this defendant of the provisions of Chapter 13, Title 94, of the Revised Statutes of Texas, because under said provisions of Article 4568 of said title and chapter exclusive jurisdiction is given to the Railway Commission of Texas to hear and determine complaints of this nature and to award damages due for such violation in case the Railway Commission of Texas finds there has been such violation, all of which will appear from an examination of the pleadings filed herein by the plaintiff considered in connection with said Article 4568 of the Revised Statutes of Texas, wherefore this defendant prays that this Honorable Court adjudge that it has not jurisdiction to pass upon the matters involved herein other than for penalties, and that the defendant be dismissed herefrom with its cost in so far as the action for damages or overcharge is concerned.

PARKER & HEFNER,

Attorneys for Defendant Texas & N. O. R. R. Company.

Subject to the foregoing pleas to the jurisdiction, this defendant appearing herein further for the purpose of this plea only, would respectfully show to the court that this case is an action brought

by plaintiffs solely for the purpose of having it determined that this defendant and its co-defendant violated the regulations of the Railway Commission of Texas and violated the provisions of Chapter 13, Title 94 in charging a different rate for the transportation of the shipments described in plaintiff's petition from the rate prescribed by the Railway Commission of Texas for domestic shipments of similar freight from Ruliff, Texas to Sabine, Texas. This
 99 defendant is advised, and upon such advice, information and belief alleges that the only question of fact to be determined in this case is whether or not the shipments referred to in plaintiffs' petition were domestic shipments coming under the control and regulation of the Railway Commission of Texas, or foreign shipments such as come under Section 8 of Article 1 of the Constitution of the United States of America and are subject to no regulation other than that of Congress.

This defendant would further show that heretofore, on to-wit, the — day of — A. D. 1907, the said plaintiff, the Sabine Tram Company did in the name of the State of Texas by itself the said plaintiff as Relator file a complaint against the identical defendants named by it in this cause such complaint being filed before the Honorable Railway Commission of the State of Texas, wherein the said plaintiff as Relator set forth practically the same facts in regard to the same shipments involved in this cause, and are now prosecuting said complaint before the Honorable Railway Commission of the State of Texas, and have caused this defendant to be cited to be and appear before said Railway Commission at a hearing of said complaint to be had on, to-wit, April 16th, 1907, and this defendant further says that as it is advised, and so alleges upon such advice, information and belief, that the sole question which will be heard, considered and determined by the said Railway Commission of the State of Texas on to-wit, April 16th, 1907, or when hearing is had upon said complaint will be identical with the sole question of fact involved in this cause, to-wit; whether or not the shipments referred to in plaintiff's petition were domestic shipments coming under the control and regulation of the Railway Commission of Texas, or foreign shipments such as come under Section 8 of Article 1 of the Constitution of the United States of America and are subject to no regulation other than that of Congress.

And this defendant would further show to this Honorable Court that upon said hearing before the Railway Commission of Texas, such Commission is especially authorized by Article 4568 of the Revised Statutes of Texas, in case it finds that this defendant has
 100 violated the law or the regulations of the Railway Commission of Texas, and to "call upon said railroad to satisfy the damage done to the complainants thereby, stating the amount of such damage"

Wherefore this defendant says that the complainants Sabine Tram Company, ought not to have and maintain this action as against this defendant so far as to the same involves damages or overcharges alleged to have been suffered by or extorted from plaintiff herein, because plaintiff has heretofore instituted, and is now

prosecuting, a complaint before the Railway Commission of Texas, as aforesaid, another tribunal within the State of Texas, against the same parties, defendant herein, based upon the same facts, alleged herein, seeking determination of the same question sought to be determined herein, and the same tribunal being empowered by the laws of the State of Texas to award the same relief sought by plaintiff herein, in so far as such alleged damage or overcharge is concerned, wherefore, this defendant says this suit in so far as it affects anything other than the penalties involved should be abated, and of this it prays judgment of the court.

PARKER & HEFNER,

Attorneys for Defendant T. & N. O. R. R. Company.

Subject to the foregoing pleas comes the defendant the Texas & New Orleans Railroad Company and respectfully shows to this Honorable Court that there is a misjoinder of cause of action herein and that plaintiff declares upon an alleged cause of action strictly of a civil nature for the recovery of alleged damages in the nature of an overcharge, or a charge of rates for transportation in excess of the rate alleged to be applicable and made by the Railway Commission of the State of Texas, which over charges if they have any existence in fact, are permitted to be recovered before the Railway Commission of the State of Texas as hereinbefore set forth, and plaintiff also in this same action declares upon an alleged act of extortion and is seeking herein to have this defendant, and its co-

defendant adjudged guilty of extortion as defined by Article 101 4573 of the Revised Statutes of Texas, and to recover penalties therefor, which action of plaintiffs, in so far as it relates to penalties is in the nature of a criminal action and wholly independent of and materially different from the action as set up in plaintiff's petition in the nature of a civil action to recover damages for alleged overcharges, and as this defendant is advised, and upon such advice, information and belief, alleges the rules of evidence and the burden of proof applied to the said two distinct causes of action set up in plaintiff's petition would be different and the facts which might entitle plaintiff to recover on one cause of action would not entitle it to recover on the other, all of which would cause confusion and tend to prevent such fair and impartial trial as this plaintiff is entitled to in the action for penalties, which is in the nature of a criminal action, wherefore defendant says that there is a mis-joinder of cause of action in this suit as it now stands, and of this defendant prays judgment of the court that same as against it be dismissed, and of this prays judgment of the court.

PARKER & HEFNER,

Attorneys for Defendant T. & N. O. R. R. Company.

Oswald S. Parker, attorney for one of the defendants herein, the Texas & New Orleans Railroad Company, being duly sworn upon his oath states that the matters of fact set forth in the foregoing plea are true as therein stated.

OSWALD S. PARKER.

Subscribed and sworn to before me this the 30th day of March,
A. D. 1907.

[SEAL.]

R. A. HEFNER,
Notary Public in and for Jefferson County, Texas.

Subject to the foregoing pleas, defendant for answer herein says:

I.

102 The defendant demures generally to the allegations in plaintiff's petition contained and says same are insufficient to entitle plaintiff to the relief sought in this action, and of this it prays judgment of the court.

II.

This defendant specially excepts to the petition of plaintiff herein in that it appears from plaintiff's petition that it is seeking to recover herein of this defendant on two distinct and different causes of action, one of the same being strictly a civil action, and the other in the nature of a criminal action such as cannot be properly joined in one suit, all of which appears from the face of plaintiff's petition, and wherefore this defendant prays judgment of the court that it be dismissed with its costs.

III.

Further specially excepting to plaintiff's petition this defendant says that it appears therefrom that plaintiff is seeking to recover in this suit in this court damages for the alleged violation by this defendant of the laws of the State of Texas and the regulations of the Railway Commission of Texas in that it is alleged that this defendant charged another and different rate for the shipments involved in the controversy set up in this suit from that rate previously fixed by the Railroad Commission of the State of Texas and alleged by the Plaintiff to be applicable thereto, which damages, if the facts be as plaintiff alleges, are such as can be awarded upon a hearing before the Railway Commission of Texas and said Railway Commission of Texas under the law has sole and exclusive authority to grant the relief sought by plaintiff herein as regards such damage, and this Honorable Court has no jurisdiction to hear and determine such cause of action as appears from the facts as alleged in plaintiff's petition filed herein, wherefore, this defendant prays judgment of the court that this action, in so far as it seeks to recover damages in the nature of overcharges be dismissed
103 with costs awarded to this defendant.

IV.

Further answering, in the event only that further answer be required, this defendant denies all and singular the allegations in plaintiff's petition contained, demands strict proof thereof, and of this it puts itself upon the country.

V.

Answering specially to that part of plaintiff's petition which alleges that this defendant has been guilty of "extortion" as defined by the Statutes of Texas, this defendant pleads "Not Guilty."

PARKER & HEFNER.

Endorsed: "No. 6071. Sabine Tram Co., vs. T. & N. O. R. R. Co. et al. Original answer of defendant T. & N. O. R. R. Co. Filed Apr. 1, 1907. B. Boykin, Clerk D. C. Jeff. Co. Tex., By D. Graym, D'p'ty."

In the District Court of Jefferson County, Texas.

No. 6071.

SABINE TRAM COMPANY

VS.

T. & N. O. RAILROAD COMPANY et al.

Pl'ff's Response to T. & N. O. R. R. Co.'s Plea in Abatement.

Now comes the Sabine Tram Company in response to the defendant, T. & N. O. Railroad Company's plea in abatement herein on the grounds of the proceeding pending before the Railroad Commission of Texas on the relation of plaintiff herein and shows to the court:

That it is not true that this plaintiff in said proceeding before the Railroad Commission is seeking to recover through said Commission the damages and penalties sought to be recovered in this action. But, that said proceedings before the Railroad Commission is merely an application by this plaintiff as relator to have the Railroad Commission determine whether or not the extortions and overcharges sought to be recovered herein were willfully demanded by said defendant, and if said Commission should find that they were, then to have the State of Texas, through said Commission, and at its instance, enforce the penalties in behalf of the State of Texas and accruing to the State, and not to this plaintiff by reason of said alleged willful overcharges and extortions; that in said proceeding this plaintiff does not ask said Railroad Commission to determine or fix its damages as set up in this suit or pass upon its right to recover the penalties sought to be recovered herein, but expressly declares in said proceeding that it has filed this suit to recover its overcharges and penalties and seeks no relief for itself on that account before said Commission, all as will appear from a substantial copy of said petition filed with the Railroad Commission, duly sworn to by Geo. C. Greer, leading counsel for plaintiff herein, hereto attached marked Exhibit "A" and prayed to be considered a part hereof.

Wherefore, plaintiff prays that said defendants' pleas in abate-

ment be over-ruled and said defendant required to answer herein on the merits.

GREER, MINOR & MILLER,
Attorneys for the Plaintiff.

Endorsed: "No. 6071. Sabine Tram Company vs. T. & N. O. Railroad Co., et al. Plaintiff's response to defendant's T. & N. O. R. R. Co.'s plea in abatement. Filed April 3rd, 1907. B. Boykin, C. D. C. Jefferson Co. Tex., By Joe Cottam, Deputy."

EXHIBIT "A."

BEAUMONT, TEXAS, March 15th, 1907.

To the Honorable Railroad Commission of the State of Texas:

And now comes the State of Texas in the relation of Sabine Tram Company complainant, and respectfully shows to your Honorable Body:

That the Sabine Tram Company owns and operates a saw mill near a station called Ruliff, in Newton County, Texas, on the Texarkana & Fort Smith Railroad at which it manufactures lumber, a large portion of which is shipped out over said railroad.

105 That the established rate adopted by your Honorable body and published by said Railroad on lumber in carload lots, minimum weight 30,000 pounds, from Ruliff to Port Arthur, over the Texarkana & Fort Smith Railroad, and from Ruliff to Sabine via the Texarkana & Fort Smith Railroad and the Texas & New Orleans Railroad was during the year 1906 and still is four (4) cents per hundred pounds.

That at various dates between August 1st, 1906 and January 1st, 1907, the complainant herein, Sabine Tram Company shipped car loads of lumber from Ruliff to Port Arthur, Texas over the Texarkana & Fort Smith Railroad between said points as follows:

(a) 28 cars to Sabine Tram Company, "Notify C. B. Wilcox," as shown by Exhibit "A" hereto attached:

(b) 25 cars shipped W. S. Keyser Co., as shown by Exhibit "B" hereto attached:

(c) 28 cars shipped to Mexican Central Railway as shown by Exhibit "C" hereto attached:

(d) 4 cars shipped to Tehuantepec National Railway, as shown by Exhibit "D" hereto attached:

(e) One car to S. Pearson & Son as shown by Exhibit "E" hereto attached:

(f) 18 cars to Robert R. Sizer & Co., as shown by Exhibit "F" hereto attached:

That in addition thereto complainant likewise shipped from Ruliff to Sabine, Texas, via Texarkana & Fort Smith Railroad to Beaumont and thence by the T. & N. O. R. R. Co. to Sabine 33 carloads of lumber, which was shipped from Sabine Tram Company at Ruliff, to Sabine Tram Company, at Sabine, Texas, "Notify W. A.

Powell Co.", which shipments are shown by Exhibit "G" hereto attached.

That each of said car loads of lumber complied with all legal requirements and exceeded the minimum weight prescribed by the Commission.

That notwithstanding the legal rate established and filed 106 by your Honorable Body was four (4) cents per hundred on all of said shipments both to Port Arthur and Sabine the Texarkana & Fort Smith Railway Company, demanded, exacted, collected and received five (5) cents per hundred pounds on each of said car loads shipped to Port Arthur, and the said T. & N. O. Railroad Company and the Texarkana & Fort Smith Railroad Company together demanded, and exacted, collected and received on said shipments to Sabine fifteen (15) cents per hundred pounds instead of the legal rate of four cents per hundred, whereby said railroad Companies were guilty of an act of extortion under the laws of this State as respects each and every car load of lumber so shipped, and the payment made therefor all of which payments were made by this complainant under protest.

That said extortions were willful on the part of each railroad company, and over repeated protests on the part of complainant herein, and that furthermore the Texarkana & Fort Smith Railroad Company continues to exact said illegal rate of five (5) cents per hundred pounds on shipments from Ruliff to Port Arthur, on lumber in car load lots.

That as respects each of said shipments to Port Arthur, and the Texarkana & Fort Smith Railroad Company issued for each car load of lumber so shipped a bill of lading showing that it had received each of said car loads from complaint for shipment from Ruliff to Port Arthur, and as respects each of said shipments to Sabine the said Texarkana & Fort Smith Railroad Company issued on behalf of itself and said Texas & New Orleans Railroad Company a bill of lading showing that each car was received for shipment from Ruliff to Sabine, and the T. & N. O. Railroad Company as connecting line with the Texarkana & Fort Smith Railroad Company knowingly received and hauled each of said cars under such bill of lading so issued.

That complainant made each of said shipments to Port 107 Arthur to fulfill contracts of sale of lumber to be delivered to Port Arthur and received its payment therefor upon delivery to Port Arthur, and had absolutely no control over said lumber after delivery at Port Arthur and as respects said shipments to Sabine Pass the complainant made each of said shipments to Sabine Pass to fulfill a contract of sale of said lumber to be delivered at Sabine Pass, under which it was entitled to its pay upon delivery at Sabine Pass, and the complainant had absolutely no control over said lumber and exerted no control over the same after delivery at Sabine Pass.

Complainant shows that each and all of said shipments were between points in this State under bills of lading so showing, and that therefore, the rates prescribed by this Honorable Body were applicable, and said 4 cent rate applied. Notwithstanding said fact Rail-

road Companies willfully made the overcharges above referred to and exacted payment of the same, which payments were made under protest, whereby said Railroad Companies have been guilty of acts of extortion.

Complainant herein has filed suits against said companies seeking to recover overcharges and the penalties prescribed by the statute, as being recoverable by the injured party, and therefore seeks no relief for itself as regards the same.

However, inasmuch as said acts of extortion violates the Laws of this State, subjecting said companies to prosecution for extortion, complainant here prays that notice be given to said Railroad Companies, and after due hearing your Honorable Body determine that said acts of extortion were willful; and thereupon prosecute said Railroad Companies for such acts of extortion and for the recovery of the penalties due to the State of Texas because of the same.

GREER, MINOR & MILLER,

Attorneys for the Complainant.

108 I, Geo. C. Greer, do solemnly swear that the above and foregoing is a substantial copy of the petition filed by Sabine Tram Co. with the Railroad Commission of Texas on March 16, 1907, showing the relief sought therein and being the proceedings referred to by def't T. & N. O. R. R. Co., in its plea in abatement.
GEO. C. GREER.

Sworn to and subscribed before me this Apr. 2, 1907.

[SEAL.]

W. E. MILLER,

Notary Public.

Endorsed: "No. 6071. Sabine Tram Company vs. T. & N. O. Railroad Co., et al. Plaintiff's response to defendant T. & N. O. R. Co.'s, plea in abatement. Filed April 3rd, 1907. B. Boykin, C. D. C. Jefferson Co. Tex., By Joe Cottam, Deputy."

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

Order Overruling Plea in Abatement, etc.

Be it remembered that on to-wit, January 20th, 1908, came on to be heard the plea in abatement and to the jurisdiction of this Honorable Court filed by the defendant, Texas & New Orleans Railroad Company, and being the first plea in its original answer contained filed herein April 1st, 1907, same not having been heretofore in

any manner waived by former continuances or otherwise, such continuances having been made without prejudice to said plea, and said plea having been duly presented to the court challenging the jurisdiction of this court to determine upon plaintiff's petition whether there was any over charge as declared upon by plaintiff, and if so, the amount thereof, on the grounds that under the provisions of Article 4568, Chapter 13, Title 94, of the Revised Statutes of Texas exclusive original jurisdiction is given to the Railway Commission of Texas to hear and determine complaints of this

109 nature, and in case of overcharge, to determine the amount thereof and award the damages caused thereby, and that this court had no jurisdiction to determine the matters involved in this suit other than for penalties, which plea being duly heard was by the court over-ruled, to which the defendant Texas & New Orleans R. R. Co., then and there in open court duly reserved its exception, and on the same day came on to be heard the special exceptions contained in the first amended original answer of the defendant Texas & New Orleans Railroad Company filed January 20th, 1908, and therein numbered II, III, IV, V, being all of the special exceptions contained in said first amended original answer of the defendant, Texas & New Orleans Railroad Company, each and all of which being duly presented to the court were by the court over-ruled, to which action and ruling of the court the defendant, Texas & New Orleans Railroad Company then and there in open court duly reserved its exception, and on the same day came on to be heard plaintiff's special exception numbered (7) in plaintiff's first supplemental petition replying to the defendant Texas & New Orleans Railroad Company, filed January 20th, 1908, same being directed to and specially excepting to all of paragraph numbered XVIII of the first amended original answer of the defendant, Texas & New Orleans Railroad Company, filed January 20th, which said paragraph XVIII set up as a defense that the rates mentioned in plaintiff's petition, if held to be applicable to the shipments mentioned in plaintiff's petition and similar shipments are unreasonably low, unremunerative, confiscatory and therefore void because if such rates be in law applicable to the shipments in question and similar shipments then defendant would be required to perform for the benefit of plaintiff and other shippers valuable services for less than the actual cost of same, which would in effect amount to the taking of defendant's property for private use and for the use of private shippers without compensation, and would deprive this defendant

110 of its property without due process of law, and deny to the defendant, Texas & New Orleans Railroad Company the equal protection of the law contrary to Act. 14, Section 1 of the Amendments to the Constitution of the United States, commonly known as the fourteenth amendment, etc., which special exception of plaintiff being duly presented to the court was by the court sustained and all of paragraph numbered XVIII of the first amended original answer of the defendant, Texas & New Orleans Railroad Company, was by the court stricken out, to which action and ruling of the court the said defendant, the Texas & New Orleans Railroad

Company, then and there duly reserve its exception, and on the same day came to be heard the special exception of the Texarkana & Fort Smith Railway Company contained in its amended answer filed January 20th 1908, by which special exception the said defendant excepted to all that part of plaintiff's petition seeking to recover penalties in excess of \$500.00 and all that part of plaintiff's petition seeking to recover cumulative penalties, because upon its face plaintiff's petition shows that plaintiff is not entitled to recover more than one penalty of not less than \$125.00, nor more than \$500.00, which special exception being duly presented to the court was by the court overruled, to which action and ruling of the court the defendant, Texarkana & Fort Smith Railway Company then and there in open court duly reserved its exception.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

First Amended Original Answer of T. & N. O. R. R.

Comes now the Texas & New Orleans Railroad Company and under leave of the court files this its first amended original answer in lieu of its original answer herein before filed, and not waiving its pleas to the jurisdiction nor its plea in abatement, nor its
111 plea of misjoinder of the causes of action hereinbefore filed as a preface to its original answer aforesaid, but insisting upon said pleas, and each of them, and subject thereto, for answer herein says:

I.

The defendant demurs generally to the allegations in plaintiff's petition contained and says same are insufficient to entitle plaintiff to the relief sought in this action, and of this it prays judgment of the court.

II.

This defendant specially excepts to the petition of plaintiff herein in that it appears from plaintiff's petition that it is seeking to recover herein of this defendant on two distinct and different causes of action, one of the same being strictly a civil action, and the other in the nature of a criminal action such as cannot be properly joined in one suit, all of which appears from the face of plaintiff's petition and wherefore this defendant prays judgment of the court that it be dismissed with its costs.

III.

Further specially excepting to plaintiff's petition this defendant says that it appears therefrom that plaintiff is seeking to recover in this suit in this court damages for the alleged violation by this defendant of the laws of the State of Texas and the regulations of the Railway Commissions of Texas in that it is alleged that this defendant charged another and different rate for the shipments involved in the controversy set up in this suit from that rate previously fixed by the Railway Commission of the State of Texas and alleged by plaintiff to be applicable thereto, which damages, if the facts be as plaintiff alleges, are such as can be awarded upon hearing before the Railway Commission of Texas, and said Railway

Commission of Texas, under the laws has sole and exclusive
112 authority to grant the relief sought by plaintiff herein as regards such damages, and this Honorable Court has no jurisdiction to hear and determine such cause of action as appears from the facts as alleged in plaintiff's petition filed herein, wherefore, this defendant prays judgment of the court that this action, in so far as it seeks to recover damages in the nature of overcharges be dismissed with costs awarded to this defendant.

IV.

Defendant specially excepts to all that part of plaintiff's petition and that seeks to recover penalties in excess of \$500.00 and specially excepts to all that part of plaintiff's petition which seeks to recover more than one penalty, and specially excepts to all that part of plaintiff's petition on which seeks to recover accumulated penalties, because said petition is insufficient and wholly fails to show liability on the part of this defendant to plaintiff for penalties other than a single penalty of not less than \$125.00 nor more than \$500.00, and said petition of plaintiff shows upon its face that plaintiff is not entitled to recover of this defendant more than one penalty of not less than \$125.00 nor more than \$500.00 if it is entitled to recover any penalty, and of this exception, defendant prays judgment of the court and asks that the court order stricken out all parts of plaintiff's petition seeking to recover more than one penalty on account of alleged acts of extortion charged in the petition of plaintiff.

V.

Defendant further says that if it should be held that plaintiff, under Article 4575 of the Revised Statutes of the State of Texas being section 17 of the Act of April 3rd, 1891, creating a Railroad Commission, it is entitled to recover penalties as by it alleged, for each separate shipment in plaintiff's petition described as for an overcharge, then in that event, defendant says that so construed said Article 4575 Revised Statutes being section 17 of said act of April

3rd, 1891, is invalid and void as in contravention of section
113 13 of Article one of the Constitution of the State of Texas, which provides that; "Excessive bail shall not be required

nor excessive fine imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law;" and in contravention of the fourteenth amendment to the Constitution of the United States which provides; "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law," and of this its general and special demur-ers defendant asks judgment of the court.

BAKER, BOTTS, PARKER & GARWOOD,
PARKER & HEFNER AND
WILL E. ORGAIN,

*Attorneys for Defendant, Texas &
New Orleans Railroad Company.*

VI.

Further answering, in event only that further answer be required, this defendant denies all and singular the allegations in plaintiff's petition contained, demands strict proof thereof, and of this puts itself upon the country.

VII.

Answering specially to that part of plaintiff's petition which alleges that this defendant has been guilty of "extortion" as defined by the Statutes of Texas, this defendant pleads not guilty.

VIII.

Further answering herein this defendant says: That at all times mentioned in plaintiff's petition and long prior thereto it was engaged in the transportation of property and passengers by means of its railroad, and in connection with other lines of railroad and by water, from one state and territory of the United States, and from points in the United States and in the State of Texas to foreign countries, and also was at all of said times and long prior thereto engaged in the transportation in like manner of property shipped from points in the United States and in the State of Texas to foreign countries, and carried from such place, or places in the United States to a port of trans-shipment, and was specially engaged in the business of transporting and delivering lumber from its station at Beaumont, in the State of Texas to its wharves, docks and slips located upon the waters of the Gulf, of Mexico, near to, but beyond its station of Sabine in the State of Texas, said point of delivery and the said wharves, docks and slips of this defendant being a part of trans-shipment located as aforesaid on the waters of the Gulf of Mexico in the said State of Texas, which said lumber so transported and delivered by this defendant was intended to be, and was, in fact, shipped to a foreign country.

That in the transportation, handling and delivering of passengers and property aforesaid and especially in the transportation, handling and delivering of lumber to the port of trans-shipment

aforesaid near its station of Sabine, Texas, and on the waters of the Gulf of Mexico, it was engaged in foreign commerce and was solely subject to and governed by the Constitution and Laws of the United States, and especially by the Act of Congress commonly known as Inter State Commerce Act, also styled and entitled The Act to Regulate Commerce, approved February 4th, 1887, and the amendments thereto including the Act of June 29th, 1906, amending same, and the rates fixed in accordance with the provision of the said Constitution and Laws aforesaid as shown by schedule of tariffs designated as I. C. C. No. 551 as modified by a supplement designated as No. 10 to I. C. C. No. 551, both of which schedules had been duly filed with the Inter State Commerce Commission and duly published in accordance with the provisions of the Laws pertaining thereto, and were in full force and effect at all times mentioned in plaintiff's petition.

That section Six of said act to regulate Commerce approved February 4th, 1887, with the amendments thereto in effect at the times mentioned required this defendant to print and keep open for public inspection schedules and tariffs showing the rates, fares and charges for the transportation of property which had been established by it for a through shipment, and the rates and charges for a shipment from a point in the United States to a port of trans-shipment when such property is shipped to a foreign country, and further required that such rates, schedules and charges when established should be filed with the Inter State Commerce Commission of the United States and that when so established and filed as aforesaid that it should be unlawful to charge, demand, collect or receive a greater or less, or different compensation for such transportation of property between the points named in such tariffs than that specified in the tariff filed and in effect at the time.

Defendant alleges that on July 23rd, 1906, it issued and on July 26, 1906 it filed with the Inter State Commerce Commission at Washington, D. C. its Supplement No. 1 to joint lumber tariff designated as Supplement No. 10 to I. C. C. No. 551 applying on shipments of lumber transported by it to Sabine, Texas, and to Sabine Pass, Texas, and switched to docks, wharves or slips for export to foreign countries other than Mexico, including shipments from Ruliff, Texas, that said tariff became effective August 6th, 1906, and that the schedules, rates and charges there by for lumber shipped from Ruliff, Texas, to Beaumont, Texas, and thence to Sabine, Texas, and switched to the docks, wharves and slips for export to any foreign country or countries other than Mexico were 5c per hundred pounds in car load lots of the minimum weight of 40,000 pounds each, to be charged and collected by this defendant for the haul from Beaumont, Texas, there being no joint through rate legally established and applicable to such shipments from Ruliff, Texas, but the said rate of 5c per hundred pounds for this defendant's proportion of the haul was by the provisions of said tariff supplement No. 10 to I. C. C. No. 551 applied on all shipments of lumber from Ruliff, Texas, which were

transported by this defendant to Sabine, Texas, and there switched to its dock wharves or slips for export to any foreign country or countries other than Mexico, it being specifically provided in said supplement No. 10 that as to shipments of lumber transported to Sabine Pass, Texas and such shipments transported to Sabine, Texas as follows:

"Shipments destined either port for local delivery and consumption regular tariff rate will apply, but if switched to docks, wharves, or slips for export other than Mexico or United States coastwise, moving beyond the State of Texas, above proportional rates (of 5c per hundred pounds) will apply".

Defendant alleges that the shipments of lumber mentioned in plaintiff's petition and involved in this suit were not for local delivery and consumption at Sabine, Texas, and therefore, the regular tariff on shipments of lumber from Texas, points to Sabine, Texas, established for local or intra-state shipments ought not to apply, and had no application in this case for the reason that none of the shipments of lumber mentioned in plaintiff's petition was intended to be, or was in fact destined for local delivery and consumption at Sabine, Texas, but that all the shipments of lumber mentioned in plaintiff's petition were intended to be and were in fact switched to the docks, wharves, or slips for export to a foreign country or foreign countries, other than Mexico and there delivered at a port upon the waters of the Gulf of Mexico for trans-shipment to a foreign country or foreign countries, and def't further al- that all said lumber so shipped, being all of the lumber included in the shipments mentioned in plaintiff's petition, was in fact shipped to a foreign country or foreign countries from Ruliff, Texas, and was carried from Ruliff, Texas to a port of trans-shipment, same being the port of Sabine upon the waters of the Gulf of Mexico near the station of Sabine, Texas, to which port all of said ship-
117 ments were carried by this defendant.

This defendant says that the only lawful rate applying on each and every shipment of lumber mentioned in plaintiff's petition from Ruliff, Texas to Sabine, Texas, and switched to and delivered at the docks, wharves, and slips of this defendant at the port of Sabine near Sabine, Texas, was 5c per one hundred pounds for this defendant's proportional rate for transporting same from Beaumont, Texas, plus the legally established rate on such shipments from Ruliff, Texas, to Beaumont, Texas, that this defendant had the right, and it was his duty to charge and collect for the transportation of each and every shipment of lumber mentioned in plaintiff's petition as its own proportional rate the sum of 5c per hundred pounds in addition to the rate applicable on such shipments as fixed and established by its co-defendant, the Texarkana & Fort Smith Railway Company for its proportional rate for transporting and handling same from Ruliff, Texas to Beaumont, Texas, which said right was given and guaranteed to this defendant, and which said duty was imposed upon this defendant, under and by virtue of the Constitution and Laws of the United States, and especially under Article One, Section Eight of the Constitution of the United

States investing the Congress of the United States with the full and exclusive power and authority to regulate commerce with foreign nations and among the several states, and the Act of the Congress of the United States styled the Act to Regulate Commerce, approved February 4th, 1887, and the Amendments thereto, including the Act of June 29th, 1906, amending same commonly known as the Inter State Commerce Act, and the schedule of rates and charges for transportation printed, published, established and filed with the Inter State Commerce Commission as aforesaid, being joint lumber tariff I. C. C. No. 551 as amended and modified by Supplement No. 10 to I. C. C. No. 551.

118 And further answering this defendant says that it not only had the right to collect the rate hereinbefore specified on each and every shipment mentioned in plaintiff's petition, but that it was its duty under the Constitution and Laws of the United States and under the tariffs as fixed in said schedules printed, published and established and filed as aforesaid to demand and collect the said rates and no less, and that in doing so and having done so it is entitled to the protection of its said rights under the Constitution and Laws and authority of the United States, and especially under Article One, Section Eight of the said Constitution investing Congress with full and exclusive power to regulate commerce with foreign nations and among the several states, and the Act of Congress hereinbefore particularly described and designated and under the schedules of rates hereinbefore referred to.

IX.

For further answer defendant says that all of the lumber mentioned in plaintiff's petition when delivered to its co-defendant, the Texarkana & Fort Smith Railway Company, at Ruliff, Texas, and especially when delivered to this defendant at Beaumont, Texas, was intended to be, and was in fact shipped from a place in the United States, to-wit; Ruliff, Texas, to a foreign country or countries; that none of said lumber was intended for local delivery or for local consumption at the port of Sabine near the station of Sabine, Texas, nor was any of said lumber shipped or intended for shipment to coastwise points within the State of Texas, that plaintiff was at the time of and long before the shipment aforesaid familiar with and knew the fact that the rate in plaintiff's petition designated did not apply on shipments of lumber from Ruliff, Texas to Sabine, Texas, and switched to the docks, wharves or slips at the port of Sabine for trans-shipment to a foreign country or to points in the United States outside of and beyond the State of Texas, and the plaintiff knew and was familiar with the fact that the

119 rates as fixed by the Railway Commission of the State of Texas had no application to said shipments as in fact they did not.

And this defendant says that if it be mistaken in the matter herein last alleged, and if it be true that the plaintiff at the time said shipments of lumber were delivered to the Texarkana & Fort

Smith Railway Company, at Ruliff, Texas, or at the time said shipments of lumber were delivered to this defendant at Beaumont, Texas, intended that same should be shipped only to Sabine, Texas, for local delivery or for local consumption at Sabine, Texas, but this defendant says that if the plaintiff ever intended said shipments for local delivery at Sabine, Texas, or to be delivered for local consumption at Sabine, Texas, that such intention was thereafter changed before the contract for shipment of said lumber was consummated and that while said shipments and each of them were still in transit the plaintiff, the Sabine Tram Company, its agent, or assignee changed the ultimate destination of said shipments and each of them, and instructed this defendant to switch said lumber to the wharves, docks or slips of this defendant at the Port of Sabine, on the waters of the Gulf of Mexico near to, but beyond its local station at Sabine, Texas, and said shipments and each of them were so switched under the instructions of said plaintiff, its agent, or assignees to the docks, wharves or slips of this defendant at the Port of Sabine on the waters of the Gulf of Mexico in the vicinity of, but beyond its local station at Sabine, Texas, to a port of trans-shipment from whence said lumber and all thereof was re-shipped on vessels from such port to a foreign country, or to foreign countries, never having been delivered locally at Sabine, Texas, and delivery never having been demanded or accepted at the local station of this defendant at Sabine, Texas, and this defendant says that if the original shipment and the original contract for shipment, or either, was for an intra-state shipment or a local shipment from Ruliff, Texas, Texas, to Sabine, Texas, that such shipment and such contract of shipment was changed in transit by the plaintiff, the Sabine Tram Company, its agent or assignee to a shipment from Ruliff, Texas, to a foreign country, and was carried from Ruliff, Texas, a place in the United States as a continuous shipment to the wharves, docks and slips of this defendant at the port of Sabine in the vicinity of but beyond this defendant's local station of Sabine, Texas, said port being a port of trans-shipment from which said shipments and each of them were loaded upon vessels and transported to a foreign country, or to foreign countries, and this defendant says that the shipments mentioned in plaintiff's petition and each of them as actually performed and completed under the express direction of plaintiff herein, the Sabine Tram Company, its agents or assignee, were not local shipments, or intra-state shipments, but were in truth and in fact foreign shipments within the contemplation and coming within the scope of the provisions of Article One, Section Eight, of the Constitution of the United States and the Act to regulate commerce enacted and passed by the Congress of the United States and approved February 4th, 1887, and the amendments thereto, to which the schedules hereinbefore described and designated filed with the Inter State Commerce Commission apply.

X.

This defendant for further answer says that at the dates mentioned in plaintiff's petition and for a long time prior thereto plaintiff and other shippers along the line of this defendant's railroad, and along the line of its co-defendant, the Texarkana & Fort Smith Railway Company's road, and its connections, and especially along the line of the Kansas City Southern Railway's were engaged in manufacturing and shipping a large amount of lumber through Beaumont, Texas, and through Sabine, Texas, which was switched from Sabine, Texas, to the docks, wharves and slips of this defendant near to, but beyond the local station at Sabine, Texas, to the

121 port of Sabine on the waters of the Gulf of Mexico, a port of trans-shipment, and thence to a foreign country or foreign countries and to points in the United States beyond the State of Texas, that said shipments and movements constituted a large important and constantly recurring course and current of commerce among the states and between the State of Texas and other States of the United States and foreign countries which was well known to both plaintiff and defendant at the time of each of said shipments, and which was well known and in the contemplation of the parties at the times of the completion of each of said shipments and at the times of the delivery thereof upon the docks, wharves and in the slips of this defendant at the Port of Sabine aforesaid, and that at each and all of said times it was understood and contemplated by the plaintiff and by its agent or assignee, the W. A. Powell Company, Ltd., and by this defendant, as well as by its co-defendant, the Texarkana & Fort Smith Railway Company, that said shipments of lumber and each of them would be moved and shipped from said Ruliff, Texas, a place within the United States to the docks, wharves and slips of this defendant, near to, but beyond its local station of Sabine, Texas, a port of trans-shipment for export to and ultimate delivery in a foreign country or foreign countries, and that it was never contemplated by any of the parties that the lumber would be stopped at this defendant's local station of Sabine, Texas, the destination named and claimed in plaintiffs' petition for local delivery or for local consumption, but it was, at the time said lumber was delivered by plaintiff to the Texarkana & Fort Smith Railway Company at Ruliff, for shipment, and at all times thereafter contemplated and understood by each and every party to this suit and especially by the plaintiff, the Sabine Tram Company, and by its agent or assignee, the W. A. Powell Company, Ltd., that said lumber was for export and that said shipment originating at Ruliff, Texas,

122 was part of a through shipment to a foreign country or to foreign countries, and that said lumber would be carried by the Texarkana & Fort Smith Railway Company from Ruliff, Texas, to Beaumont, Texas, and thence by this defendant to Sabine, Texas, and from there switched to the docks, wharves, or slips of this defendant at the Port of Sabine on the waters of the Gulf of Mexico, near to, but beyond the defendant's local station of Sabine, Texas, for immediate and continuous trans-shipment from said port of

Sabine to a foreign country, or to foreign countries; that said lumber was, in fact, so transported, and was in fact, under the express direction of the plaintiff, the Sabine Tram Company, or its agent and assignee, W. A. Powell Company, Ltd., switched from this defendant's local station of Sabine, Texas, to the docks, wharves or slips of this defendant at the port of Sabine near to, but beyond its local station of Sabine, Texas, and there delivered by this defendant and from thence trans-shipped by the plaintiff, The Sabine Tram Company, or its assignee and agent, W. A. Powell Company, Ltd., to a foreign country, or to foreign countries. Said shipments of lumber mentioned in plaintiff's petition, and each of them were carried by this defendant from a place in the United States to the port of trans-shipment and there unloaded from the railway cars and re-loaded by the plaintiff, or by its agent and assignee, W. A. Powell Company, Ltd., into steamships, or other carriers navigating the high seas and trans-shipped thence to a foreign country or to foreign countries and beyond the limits of the State of Texas, and this defendant says that in the performance of its service in connection with said shipments, and each of them, it was engaged in, and it was contemplated at each and all of the times hereinbefore mentioned that this defendant in the performance of this service would be engaged in foreign commerce, and this defendant was entitled to, had the right to, and was charged with the duty, under the Constitution and Laws of the United States to demand, collect and receive the regular charges fixed by the tariffs and schedules for such service in conformity with said constitution and laws applying to shipments from a place in the United States to a foreign country and was entitled to, had the right to, and was in duty bound under said Constitution and Laws of the United States to demand, collect and receive for itself its proportional rate of 5¢ per hundred pounds and in addition thereto the legal rate established and fixed as applicable to foreign commerce by its co-defendant, the Texarkana & Fort Smith Railway Company for its services in connection with said shipments in conformity with the tariffs and schedule hereinbefore more particularly described and designated.

XI.

For further answer this defendant says that if the bills of lading mentioned in plaintiff's petition provided that the final destination of said lumber was Sabine, Texas, that the same was and is a mutual mistake and that the plaintiff and this defendant, as well as its co-defendant, the Texarkana & Fort Smith Railway Company, intended and contemplated that said lumber, and each shipment thereof, should be carried by this defendant beyond its local station of Sabine, Texas, and to its docks, wharves, and slips at the port of Sabine near to, but beyond, the station of Sabine, Texas, said port being a port of trans-shipment through which and from which it was intended that said lumber should be trans-shipped to a foreign country, or to foreign countries beyond the State of Texas. And this defendant says that if it be mistaken in its allegations immediately preceding

to the effect that if Sabine, Texas, was named as the final destination of said shipments of lumber, and each of them, that the naming of Sabine, Texas, as a final destination was a mutual mistake, then this defendant says that the intention as to the final destination was changed after the execution of said bills of lading and before the performance and completion of the contract of shipment evidenced by each of said bills of lading, or was never performed and completed in strict accordance with the terms thereof in that

124 none of the shipments of lumber mentioned in plaintiff's petition in fact ended at this defendant's local station of Sabine, Texas, and none of the lumber so shipped was demanded or accepted by or delivered to the plaintiff, Sabine Tram Company, or its agent and assignee, W. A. Powell Company, Ltd., at this defendant's local station of Sabine, Texas, but each shipment and each contract of shipment covering said lumber was changed in transit and before the performance or completion thereof so that said lumber, and each shipment thereof was carried by this defendant upon the request and under the express direction of the plaintiff, or of its agent and assignee, W. A. Powell Company, Ltd., beyond this defendant's local station of Sabine, Texas, without acceptance thereof or delivery or demand for delivery at said local station of Sabine, Texas, to this defendant's docks, wharves and slips at the port of trans-shipment, same being the port of Sabine on the Gulf of Mexico, from whence said lumber, and each shipment thereof, was trans-shipped to a foreign country or foreign countries to its ultimate and final destination beyond the State of Texas.

And this defendant says that if it be mistaken in alleging that there was a mutual mistake in naming Sabine Pass, Texas, as the final destination of said lumber, and each shipment thereof, if Sabine Pass, Texas, was in fact named as the final destination of said shipments as alleged in plaintiff's petition, and if it be also mistaken in alleging that the ultimate or final destination of said shipments and each of them, was changed after same was delivered to the Texarkana & Fort Smith Railway Company at Ruliff, Texas, and before performance and completion of said contracts of shipment, and each of them as evidenced by said Bills of Lading, then this defendant says that the plaintiff the Sabine Tram Company, delivered the said shipments of lumber mentioned in plaintiff's petition, and each of them, to a common carrier, to-wit, the Texarkana

& Fort Smith Railway *Railway* Company at Ruliff, Texas, a
125 common carrier subject to the provisions of the Inter State Commerce Act hereinbefore referred to with the intention that the said common carrier and this defendant should transport for said plaintiff as consignor and for said plaintiff and for W. A. Powell Company, Ltd., its agent and assignee, as consignee and the said lumber mentioned in plaintiff's petition and that said plaintiff, Sabine Tram Company, knowingly and wilfully by false billing and by a fraudulent device or means, whether with or without the consent and connivance of said Texarkana & Fort Smith Railway Company, its agent or agents, this defendant is not advised, and therefore does not allege, sought to obtain transportation for such ship-

ments of lumber, and each of them at less than the regular rates then established and in force on the line of transportation of and for said shipments of lumber, and each of them, from Ruliff, Texas via the Texarkana & Fort Smith Railway Company's line to Beaumont and thence via the line of this defendant to its wharves, docks and slips at the Port of Sabine, on the waters of the Gulf of Mexico, near to, but beyond, this defendant's local station at Sabine, Texas, said port being a port of trans-shipment through which it was intended that said shipments of lumber and each of them should be shipped and from which said shipments of lumber and each of them were trans-shipped to a foreign country beyond the limits of the State of Texas, and this defendant says that in so doing the plaintiff, Sabine Tram Company, was guilty of fraud within the terms of Section Ten of the Act to Regulate Commerce enacted by the Congress of the United States, approved February 4th, 1887, and the amendments thereto in force at the time of said shipments, and each of them, and that by the terms of the same Section of said Act this defendant could not lawfully, knowingly and wilfully assist, nor could it wilfully suffer or permit the plaintiff, Sabine Tram Company, or its agents and assignee, W. A. Powell Company, Ltd., to obtain transportation for said property at less than the regular rates established and in force applicable to shipments of lumber

126 from Ruliff, Texas, a place in the United States, to a foreign country, and carried from Ruliff, Texas, a place in the United States, to the port of Sabine on the waters of the Gulf of Mexico, near to, but beyond this defendant's local station of Sabine, Texas, same being a port of trans-shipment, but it was this defendant's right as well as its duty under the provisions of Article One, Section Eight of the Constitution of the United States and under the provisions of the said Act of Congress last mentioned, known as the Inter State Commerce Act, and particularly under Section 10 thereof, to enforce, demand, collect and receive 5¢ per hundred pounds as its proportional rate for the services by it performed in carrying said shipments of lumber, and each of them, from Beaumont, Texas, through Sabine, Texas, and beyond it the wharves docks and slips of this defendant, at the port of Sabine aforesaid, same being a port of trans-shipment and in addition thereto, to enforce, demand, collect and receive the legal rate as established by the Texarkana & Fort Smith Railway Company in conformity with said Constitution of the United States and the said Interstate Commerce Laws for its services performed in carrying said shipments of lumber, and each of them, from Ruliff, to Beaumont, Texas, as aforesaid.

XII.

This defendant specially denies that it demanded, collected or received the sum of 15¢ per hundred pounds of said lumber, or any other sum, for transporting the shipments of lumber mentioned in plaintiff's petition, or any of them, from Ruliff, Texas, and this defendant also specially denies that it demanded, collected or received the sum of 5¢ per hundred pounds of lumber for transporting the

shipments of lumber mentioned in plaintiff's petition, or any of them, over its lines from Beaumont, Texas to Sabine, Texas, and this defendant further denies that it demanded, collected or received the sum of 10¢ per hundred pounds of lumber for the account of its co-defendant, the Texarkana & Fort Smith Railway Company

127 as its proportional rate for carrying the said shipments of lumber mentioned in plaintiff's petition from Ruliff, Texas, to Beaumont, Texas, as a proportional rate for such carriage upon the shipments mentioned in plaintiff's petition or any of them, shipped, or carried as intra-state, or local shipments from Ruliff, Texas, to Sabine, Texas, but this defendant alleges the facts to be: That it collected the said sum of 5¢ per hundred pounds of lumber upon the shipments mentioned in plaintiff's petition, and each of them, as its proportional rate for the transportation of said lumber from Ruliff, Texas, to the docks, wharves and slips of this defendant at the Port of Sabine, a port of entry and trans-shipment where said lumber was transported by this defendant and by it delivered, and where said lumber was intended to be and was in fact trans-shipped on ocean going vessels and exported and carried to a foreign country, or to foreign countries beyond the State of Texas, and that the plaintiff, the Sabine Tram Company, and also its agent and assignee, W. A. Powell Company, Ltd., knew, intended and expected, and before completion and delivery of said shipments of lumber, or any of them, expressly directed that said lumber, and each shipment thereof should be transported and carried from Ruliff, Texas through Beaumont, Texas and through and beyond this defendant's local station of Sabine, Texas, and delivered at and upon the wharves and docks and into the slips of this defendant at a point beyond this defendant's local station at Sabine, Texas, at the Port of Sabine, aforesaid, and there delivered and from there trans-shipped to a foreign country or foreign countries, and this defendant alleges the facts to be, and to have been at all times mentioned in plaintiff's petition and at the time of and before the completion of said shipments, and the delivery by this defendant, as was at all time well known to plaintiff, the Sabine Tram Company, and to its agent and assignee, W. A. Powell Co., Ltd., that it was necessary in the

128 ordinary, customary and usual performance of such services, that said shipments of lumber should be, and they were in fact, carried by this defendant beyond this defendant's local station at Sabine, Texas, and beyond any point at Sabine, Texas, where freight was customarily delivered by this defendant for local delivery, or for local consumption, to this defendant's wharves, docks, and slips at the Port of Sabine on the waters of the Gulf of Mexico, aforesaid, thereby necessarily devolving upon this defendant the additional services of transporting said shipments of lumber, and each of them, mentioned in plaintiff's petition some two miles or more beyond its local station at Sabine, Texas, and involving the additional haul and additional transportation, to that extent, in excess of what would have been necessary had said lumber been delivered and accepted at this defendant's local station at Sabine, Texas, for which this defendant demanded, collected and received, as plaintiff,

Sabine Tram Company, and its agent and assignee W. A. Powell Company, Ltd., both well knew, or should have known at all times that this defendant would demand, collect or receive the rate fixed for such services as shown by schedules of rates aforesaid filed with the Inter State Commerce Commission of the United States at Washington, D. C., in conformity with, agreeable to and as authorized and required by Article One, Section Eight of the Constitution of the United States, and the Act of Congress entitled the Act to Regulate Commerce, enacted by Congress, and approved February 4th, 1887, and the amendments thereto, and the aforesaid schedules of rates filed in compliance with the terms of said Act of Congress, and in so doing this defendant says it was and is protected by the said Article One, Section Eight of the Constitution of the United States, and by the Act of Congress and by the schedules of rates aforesaid, filed in compliance *with* therewith and applicable to such shipments.

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XIII.

For further answer this defendant says that the rates mentioned in plaintiff's petition as fixed and established by the Railway Commission of the State of Texas were not applicable and at the time — times mentioned in plaintiff's petition no rate governing said shipments had been fixed by the Railway Commission of the State of Texas applicable to said shipments transported as each and every shipment mentioned in plaintiff's petition was a through and continuous shipment from Ruliff, Texas, beyond this defendant's local station at Sabine, Texas, and carried to and delivered to the docks, wharves and slips of this defendant at the Port of Sabine located as aforesaid and no rate was at said time or times fixed or established by the Railway Commission of the State of Texas applicable to shipments of lumber so carried, or applicable to such shipments of lumber *from* shipped from Ruliff, Texas, to a foreign country or to foreign countries and carried as said shipments of lumber, and each of them, were by the Texarkana & Fort Smith Railway Company and this defendant from Ruliff, Texas, to the docks, wharves, or slips of this defendant on the waters of the Gulf of Mexico, and there delivered at a port of trans-shipment, whence said shipments and each of them were intended to be and were in fact trans-shipped via ocean going vessels to a foreign country, or foreign countries, and this defendant further says that if the rates mentioned in plaintiff's petition, or any other rates were fixed and established, or were attempted to be fixed or established by the Railway Commission of the State of Texas, at the time or times mentioned in the plaintiff's petition, or at any of the times mentioned in plaintiff's petition, applicable or intended to be applicable to such shipments, such rates were null and void for the reason that the Railway Commission of the State of Texas had no authority under the Statutes and laws of the State of Texas to fix and establish any rates applicable on such shipments, and this defendant further says that if the statutes and laws of the State of Texas gave, or sought to give authority to the Railway Commission of the State of Texas to fix such rates, or any rates applicable to

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such shipments, that such statutes and laws were in so far as they gave or sought to give to the Railway Commission of the State of Texas such authority, null and void and of no force and effect for the reason that they violated and were in conflict with Article One, Section Eight of the Constitution of the United States and the Act of Congress entitled the Act to Regulate Commerce, enacted by Congress and approved February 4th, 1887, and the amendments thereto, and the schedule of rates filed by this defendant and by its co-defendant, the Texarkana & Fort Smith Railway Company with the Interstate Commerce Commission at Washington, D. C., in compliance with said Act of Congress, and for the reason that said shipments of lumber mentioned in plaintiff's petition, and each of them, were foreign shipments, being shipments of lumber from Ruliff, Texas, a place in the United States, shipped thence to a foreign country, or to foreign countries, and carried from such place, to-wit: Ruliff, Texas, to a port of trans-shipment, to-wit, to this defendant's wharves, docks and slips on the waters of the Gulf of Mexico at the Port of Sabine, aforesaid, whence said lumber and each shipment thereof, was trans-shipped and was intended to be trans-shipped and carried to a foreign country, or foreign countries, and this defendant says that neither the State of Texas, nor the Legislature of the State of Texas, nor the Railway Commission of the State of Texas has, or had, any authority to make, establish or fix any rates applicable to such shipments so carried, or any of them, but that such power and authority is vested by Article One, Section Eight of the Constitution of the United States solely in Congress, and that such power and authority was thereby exclusively vested in the Congress of the United States, and was, and had been prior to all of of the time mentioned in plaintiff's petition, actually exercised by the Congress of the United States by the enacting by

131 Congress of the aforesaid Act to Regulate Commerce, approved February 4th, 1887, and the amendments thereto, and by conforming to the said Constitution and Laws of the United States and by authority thereof, rates governing and applicable to said shipments are now, were at the times complained of in plaintiff's petition and previously had been fixed, established, and published, and schedules thereof duly filed with the Inter State Commerce Commission and all the provisions of said Laws of the United States pertaining thereto had at all times been fully complied with.

XIV.

For further answer, this defendant says that had it recognized the rates mentioned in plaintiff's petition on the shipments of lumber therein mentioned, or any of them, and demanded, received and collected only such rates for such shipments, it would have violated the laws of the United States herein before specifically described, and specially the Act to Regulate Commerce enacted by Congress and approved March 4th, 1887, as amended March 3rd, 1889 by the terms of which last mentioned Act this defendant, as well as every director, officer thereof, and every person acting for and employed by this defendant who wilfully demanded, received, or col-

lected said rates mentioned in plaintiff's petition only upon said shipments of lumber, or willingly permitted or suffered same to be done, would have been guilty thereby of a misdemeanor as defined by Section 10 of said Act last mentioned, and by the terms thereof would have been liable to prosecution and conviction in any district court of the United States within the jurisdiction of which said offense was committed, and would have been subjected therefor to a fine of not exceeding \$5000.00 or imprisonment in the penitentiary of the United States for a term of not exceeding two years, or both in the discretion of the court, and this defendant further says that if this defendant, its officers, directors, agents, servants and employees aforesaid, would not have been guilty of a mis-

132 misdemeanor under the terms of the Act of Congress aforesaid in demanding, collecting and receiving only the rates named in plaintiff's petition upon the shipments of lumber therein mentioned, or any of them, then this defendant says that under the language of article One, Section Eight of the Constitution of the United States and the said Act of Congress hereinbefore designated, they and this defendant would apparently have been guilty of a misdemeanor, and defendant further says that under the provisions of section one of the Act of Congress of the United States approved February 19, 1903, commonly known as the Elkins Act, as amended by act of June 29, 1906, entitled "An Act to further regulate Commerce with foreign nations and among the States," it is provided that whenever any carrier files with the Inter State Commerce Commission or publishes a particular rate under the provisions of the act to regulate Commerce and acts amendatory thereof, or participates in any rate so filed or published, that rate, as against such carrier, its officers or agents, in any prosecution begun under this act, shall be conclusively deemed to be the legal rate, and any departure from such rate or any offer to depart therefrom shall be deemed to be an offense under said section of said act; it being further provided therein that the wilful failure upon the part of any carrier, subject to the act to regulate commerce and act amendatory thereof, to strictly observe tariffs and rates so published, shall be a misdemeanor and shall subject the carrier to a fine of not less than one thousand nor more than twenty thousand dollars and the particular officer or agent thereof in default in addition to such fine, to an imprisonment of not exceeding two years in the penitentiary, or both by such fine and imprisonment, in the discretion of the court, and this defendant, its officers, directors, agent, servants and employees believed and feared, with just and reasonable grounds for such belief and fear, that they would have been guilty of a misdemeanor as so defined

133 had this defendant demanded, collected and received only the rates mentioned in plaintiff's petition upon the shipments of lumber therein mentioned, or any of them, and it is not and was not at the time or times mentioned in plaintiff's petition, or at any of such times apparent beyond a reasonable doubt, or reasonably clear, nor did this defendant, its officers, directors, agents, servants or employees believe that

a misdemeanor would not be committed if only the rate mentioned in plaintiff's petition were demanded, collected and received on the shipments of lumber mentioned in said petition, or on any of them, and this defendant further says that this defendant, its officers, directors, agents, servants and employees, sought and obtained legal advice in the premises from lawyers of good standing, generally considered and believed by this defendant, its officers, directors, agents, servants and employees aforesaid to be competent to give legal advice which could with reasonable safety be acted upon and were advised that it would be unlawful, and a violation of the aforesaid Inter State Commerce Law for this defendant to demand, accept or receive only the rates mentioned in plaintiff's petition on the shipments of lumber therein described, or any rates as applied to such shipments other than those fixed under the Constitution and Laws of the United States and filed with the Inter State Commerce Commission aforesaid, and this defendant, its officers, directors, agents, servants and employees believed such legal advice to be correct and relied thereon and acted in accordance therewith.

And defendant further says that in the event it should be held that it was unlawful for this defendant to charge and accept the rates hereinbefore described, and that the proper and legal rate upon said shipments and each of them was the rate by plaintiff alleged to be such legal rate, then in that event, this defendant says that such overcharge if any, was not wilfully made, but was unintentionally and innocently made through a mistake of fact in this:

that defendant and its agents acting in that behalf believed in
134 good faith that the several shipments by plaintiff described were each intended for export and that in truth and in fact the only legal rate was that described in defendant's said tariffs hereinabove set out, and that such shipments and each of them were subject to the rate in said tariff set out and not to the rate provided by the Railroad Commission of Texas and by plaintiff declared upon.

Wherefore this defendant says that if it be determined that the rates mentioned in plaintiff's petition were applicable to the shipments of lumber therein mentioned, or any of them, nevertheless, by reason of the matters aforesaid, and especially by reason of the fact that under the constitution and laws of the United States and of the State of Texas, it did not clearly appear that such rates were applicable this defendant in no event should be, nor can be, held guilty of a penal offense, nor liable to the infliction of any penalty or penalties by reason of the matters alleged in plaintiff's petition should same be found to be true in fact, which this defendant does not admit and does not believe, but specifically denies.

XV.

For further answer this defendant says: That the shipment and movement of the lumber mentioned in plaintiff's petition constituted a part of a large course, stream and constantly recurring current of inter-State and foreign commerce, exclusively under the regulation

and control of the United States Inter-State Commerce Commission and this defendant says that Ruliff, Texas, is in the same vicinity and in the same territory with other places across the Sabine River and in the State of Louisiana, where conditions are substantially the same as at Ruliff, Texas, and this defendant says that in the same territory with Ruliff, Texas, but on the Louisiana side of the Sabine River, are and were at all times mentioned in plaintiff's petition mills for the manufacture of lumber belonging to parties other than the plaintiff herein: that such mills are now and then were

135 engaged in the manufacture of large quantities of lumber such as composed the shipments mentioned in plaintiff's petition, and the owners of such mills were and are entitled in justice and in law to the same rate, or to practically the same rate on shipments of lumber from such points in Louisiana in the vicinity of Ruliff, Texas, to Sabine, Texas, and especially to this defendant's docks, wharves and ships at the port of Sabine, Texas, on the waters of the Gulf of Mexico near Sabine, Texas, where the shipments mentioned in plaintiff's petition were transported and delivered by this defendant, and this defendant says that if the Railway Commission of the State of Texas be held authorized to fix rates on such shipments from Ruliff, Texas, and if the rates mentioned in plaintiff's petition are applicable to the shipments mentioned in plaintiff's petition, and similar shipments, then the application of said rates fixed by the Railway Commission of the State of Texas result, and will result in giving to the plaintiff, the Sabine Tram Company, and other shippers at Ruliff, Texas, if any, an undue and unfair advantage on such shipments and bring about and necessarily entail discrimination by this defendant and its connecting carriers in favor of Ruliff, Texas, as against mills and manufacturing plants in the same territory, but located just across the Sabine River on the Louisiana side, and in as much as all the mills, industries and shippers located in such territory, but in the State of Louisiana pay a rate for the shipment of their property to the Port of Sabine, and to any other ports available to them, the rate fixed, established and filed with the United States Interstate Commerce Commission in accordance with the Constitution and Laws of the United States and in as much as the rates so fixed and filed with the Interstate Commerce Commission as applicable to Louisiana points in the same territory and under substantially the same conditions as Ruliff, are greatly in excess and disproportionately in excess of the rates mentioned in plaintiff's petition therefore to permit the rates men-

136 tioned in plaintiff's petition to stand or to be held valid and enforced as applicable to the shipments mentioned in plaintiff's petition, and similar shipments would necessarily force this defendant and its co-defendant, the Texarkana & Fort Smith Railway Company and their connecting lines to materially change and lower the Interstate Commerce rate fixed and filed with the United States Inter-State Commerce Commission, applicable to such Louisiana points in the same territory with Ruliff, Texas, or to become guilty of unjust discriminations as defined and prohibited by Section two of the Act to Regulate Commerce, enacted by the Congress

of the United States approved February 4th, 1887, as amended, and therefore and thereby to permit the Railway Commission of Texas to fix and establish the rates mentioned in plaintiff's petition, or any other rates as applicable to the shipments mentioned in plaintiff's petition, or similar shipments would if allowed enable the Railway Commission of the State of Texas, to interfere with and substantially control the rates fixed and established under and in conformity with and by authority of the Constitution of the United States and to hold the said rates mentioned in plaintiff's petition to be applicable to and controlling the shipments mentioned therein would result directly in the interference with and in the prevention of the free and full exercise of the exclusive power of Congress to regulate Commerce with foreign nations and among the several states.

Wherefore this defendant says that the rates mentioned in plaintiff's petition, if held to be applicable to the shipments in question, and that the orders of the Railway Commission of the State of Texas establishing and fixing such rates, if such orders exist, and the statutes and laws of the State of Texas purporting to authorize such orders for the making or fixing of such rates by the Railway Commission of the State of Texas, if the statutes and laws of the

137 State of Texas do purport to give such authority to the Railway Commission of the State of Texas, are null and void and of no force or lawful effect, because contrary to and in conflict with Article One, Section Eight of the Constitution of the United States and the Act of Congress entitled the Act to Regulate Commerce, approved February 4, 1887, and the amendment thereto, and because same interfere with the rights, duties and authority of this defendant and its connecting carrier to fix and establish rates to and from the territory mentioned in accordance with the Constitution and Laws of the United States.

XVI.

Defendant further says that under the Constitution of the State of Texas and laws made in pursuance thereof, that whenever it appears that a provision of the penal law is so indefinitely framed and of such doubtful construction that it cannot be understood either from the language in which it is expressed or from some other written law of the State, such penal law shall be regarded as wholly inoperative; and defendant says that should it be held that the rate described by the Railroad Commission of Texas and by plaintiff declared upon is the correct and legal rate applicable to the shipments by plaintiffs described, and that the rate effective under the provisions of the Interstate Commerce Act approved February 4th, 1887, and acts amendatory thereof, is not the true and legal rate, that nevertheless said matter is affected with such grave uncertainty and doubt as that the citizen cannot be held to decide such question at his peril and be subjected to pains and penalties in the event his decision in the premises should not be correct, and that said section 17 of the Act of April 3rd, 1891, being Article 4575 of the Revised Civil Statutes of the State of Texas, taken in connec-

tion with the act to regulate commerce approved February 4th, 1887, and acts amendatory thereof, and the act of Congress approved February 19th, 1903, commonly known as the Elkins Act 138 and acts amendatory thereof, as applied to the facts of this case, are each separately and altogether so indefinitely framed and of such doubtful construction that it cannot be understood either from the language in which the same are expressed or from any other written law, and that therefore as applied to said facts, they are wholly inoperative and can serve as no basis for recovery of penalties herein. Defendant further says that by and under the provisions of the penal laws of the State of Texas, if any person laboring under a mistake as to a particular fact, shall do an act which would otherwise be criminal, he is guilty of no offense, and this defendant says that if the shipments by plaintiff declared upon were in fact domestic or intra-state shipments and subject to the rates prescribed by the Railroad Commission of Texas and not to the rates applicable under the act to regulate commerce and acts amendatory thereof, herein above set out, that this defendant, its servants and agents verily and in good faith believe that said shipments and each of them were as a matter of fact subject to the rates prescribed in said tariffs filed and published and in accordance with the acts of Congress in such cases provided, and with the regulations of the Interstate Commerce Commission, and that they were not subject to the rules, rates and regulations of the Railroad Commission of the State of Texas, and that therefore if as a matter of fact such shipments were subject to the rates, rules and regulations of the Railroad Commission, of Texas, that defendant, its servants and agents were laboring under a mistake of fact for which neither this defendant nor its servants or agents are punishable under the laws of this State.

XVII.

Defendant further says that under and by virtue of the provisions of the act to regulate commerce passed by the Congress of the United States and approved February 4th, 1887, and acts amendatory thereof, and of the rules and regulations of the Interstate 139 Commerce Commission created under said acts that it was defendant's duty acting under the compulsion of severe penalties to file and publish the tariffs under which the rates actually charged upon the shipments by plaintiff described were collected, that under the provisions of the act of February 19th, 1903, and acts amendatory thereof, said tariffs as to this defendant, its servants and agents, are conclusively presumed to be the legal rates and tariffs applicable to such shipments, and that under each and all of said acts, if this defendant, its servants and agents had failed to charge and collect the rates upon each of said shipments as provided in the tariffs so published, this defendant would have subjected itself to the punishment by pecuniary fine in said act described and its servants and agents would have subjected themselves to the pecuniary fines in said act described and likewise to imprisonment in the penitentiary; that the Railroad Commission of Texas

if defendant's said rates by plaintiff declared upon, are applicable to said shipments, which it denies has prescribed another and different rate for the shipment described in said tariff, that thereby this defendant is exposed to prosecution and conviction under *such* each jurisdiction, if he obeys the laws, rules and regulations of the other; and defendant says that in such cases, to expose it to confiscatory penalties upon the part of the State of Texas or the Federal Government, when as defendant alleges the fact to be, it is compelled by the laws of both to accept such shipments and is penalized if he refuses to do so, according as he obeys the laws of the one and the other jurisdiction is to deprive defendant of its property without due process of law and deny it the equal protection of the law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

XVIII.

For further answer this defendant says: That the rates mentioned in plaintiff's petition if held and determined to be
140 applicable to the shipments mentioned in plaintiff's petition and similar shipments are unreasonably low and are insufficient to afford to this defendant, or its co-defendant, the Texarkana & Fort Smith Railway Company, due, adequate and reasonable compensation for the services performed and required to be performed, and are insufficient to pay to this defendant or its co-defendant a reasonable return on its investment necessarily maintained in order to give such services after paying the actual and necessary expenses of such service. This defendant further says that the rates mentioned in plaintiff's petition if held to be applicable to the shipments mentioned in plaintiff's petition, and to similar shipments are confiscatory, and insufficient to repay to this defendant or to its co-defendant the actual necessary expenses incurred in rendering the services required and in transporting such shipments or similar shipments from Ruliff, Texas, and especially does this defendant allege that the rate of 2½c per hundred pounds alleged to be applicable on such shipments from Beaumont, Texas, to Sabine, Texas, is insufficient and does not in fact repay to this defendant its necessary expenditures of operation in performing the services required of it in transporting such shipments and this defendant says that the reasonable necessary and legitimate expenditures made by this defendant in transporting the shipments mentioned in plaintiff's petition were in excess of the rates it would have received on said shipments based on the rate mentioned in plaintiff's petition.

Wherefore, for each and every reason hereinbefore stated in this paragraph this defendant says that the rates mentioned in plaintiff's petition, and especially the rate of 2½c. per hundred pounds on lumber from Beaumont, Texas, to Sabine, Texas, transported over this defendant's line of railroad is void, and the act or order, if any
141 therefor, of the Railway Commission of the State of Texas fixing the same is void, and the Statutes and Laws of the State of Texas if any there be purporting to authorize the

Railway Commission of the State of Texas to fix such rate are each and all void and of no force or effect in so far as they purport to give authority to the Railway Commission of the State of Texas to fix such rate, because to allow such rate to be fixed, established and enforced and to require this defendant to perform the services involved for such rate as this defendant is and was required to do, if such rate was valid and applicable, would amount to, and would, in fact, constitute the taking of the property of this defendant without due process of law, and the said rate, if enforced would deprive this defendant of its property without due process of law and the enforcement of such rate would deny to this defendant the equal protection of the law in that it would require this defendant to perform a valuable service for a compensation insufficient to repay to this defendant the expenses by it necessarily and reasonably incurred therefor and a reasonable return on its investment and for its services in addition thereto, thereby conflicting with and being prohibited by Article 14 Section One of the Amendments of the Constitution of the United States said amendment commonly known as the fourteenth amendment, and for the reasons aforesaid, this defendant says that it cannot be held liable for damages and cannot be held liable in a proceeding of this kind partaking of the nature of a criminal action for the penalties sought to be recovered, or for any penalty, because of the refusal of this defendant to recognize such void rate, or to demand, collect and receive for the services mentioned in plaintiff's petition only the said rate because same is both unremunerative and confiscatory as hereinbefore set forth and because this defendant under the Constitution and Laws of the State of Texas could not refuse to furnish the transportation demanded and to transport the lumber mentioned in plaintiff's petition when tendered to it for shipment.

142 In this connection this defendant is informed, and believes, and upon its information and belief avers that the plaintiff herein will contend that this defendant is precluded in this suit from charging as a defense to plaintiff's action or any part thereof that the rates mentioned in plaintiff's petition are unremunerative or confiscatory, and will contend that this defendant cannot here defend upon the grounds raised in this paragraph of any of them, because of the provisions of Section Five of An Act passed by the Twenty second Legislature of the State of Texas entitled an Act to Establish a Railroad Commission for the State of Texas, etc., as appears on page 58 of the officially published acts of the State of Texas for the year 1891, said Section Five being as follows:

"In all actions between private parties and railway Companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Section- 6 and 7 hereof."

And this defendant says that the said Section Five of the said act of the Legislature of the State of Texas does not in its terms, or when properly construed, preclude, this defendant from here defending upon each and every ground in this paragraph of its answer relied upon as against the action of plaintiff as here brought for damages and penalties and especially does it not preclude this defendant from so defending as against plaintiff's action herein for penalties, but this defendant says that in event it be held and determined that the said Section Five of aforesaid act to establish a railroad Commission for the State of Texas does by its terms and when legally construed purport to deny to this defendant a right to defend this suit upon all or any of the grounds of defense urged in this paragraph of this defendant's answer, then this defendant says that said Section Five of said Act of the Legislature of the State of Texas entitled an Act to Establish a Railroad Commission for the State of Texas, etc., is void and of no force and effect because in conflict with and contrary to the express provisions of the Constitution of the United States and especially contrary to Section One, Article Fourteen of the Amendments to the Constitution of the United States in that thereby this defendant being within the purview of said Constitution a person within the jurisdiction of the State of Texas is denied equal protection of the laws.

BAKER, BOTTS, PARKER & GARWOOD,
PARKER & HEFNER, AND
WILL E. ORGAIN,

*Attorneys for Defendant, Texas & New
Orleans Railroad Company.*

Endorsed: "No. 6071. Sabine Tram Co. vs. T. & N. O. R. R. Co. et al. 1st amended original answer of the defendant T. & N. O. R. R. Co., Filed January 20th, 1908, B. Boykin, C. D. C. Jefferson Co., Tex., by Joe Cottam, Deputy."

Amended Answer of Deft, Tex. & Ft. Smith Ry. Co.

In the District Court of Jefferson County, Texas, October Term, 1907.

SABINE TRAM COMPANY

VS.

TEXARKANA & FT. SMITH RAILWAY COMPANY AND TEXAS & NEW ORLEANS RAILROAD COMPANY.

Comes now the Texarkana & Ft. Smith Railway Company, one of the defendants in the above cause, and leave of the court first had and obtained, files this, its amended answer, in lieu of its original filed herein on the 28th day of Mar., 1907, and amends the same so that it shall hereafter read as follows:

Defendant excepts to plaintiff's petition and says the allegations

therein are insufficient to entitle it to maintain its suit, and of this it prays judgment.

144 Defendant specially excepts to all that part of plaintiff's petition that seeks to recover penalties in excess of five hundred (\$500.00) dollars and that seeks to recover accumulated penalties, because said petition shows upon its face that plaintiff is not entitled to recover more than one penalty of not less than one hundred and twenty five dollars (\$125.00) nor more than five hundred dollars (\$500.00) in that said petition shows that all of the shipments and charges and payments mentioned in plaintiff's petition were made at a time prior and anterior to the filing of plaintiff's suit. Defendant therefore prays the court to strike out all parts of plaintiff's petition that seeks to recover more than one penalty on account of the alleged overcharges mentioned in said petition.

S. W. MOORE & HIRAM GLASS,
ROBERTSON & WHITAKER,

Attorneys for Defendant.

Further answering herein, defendant pleads not guilty and denies all and singular the allegations in plaintiff's petition, and demands strict proof thereof.

Further answering herein, defendant says that at all the times mentioned in plaintiff's petition, and long prior thereto, it was engaged in the transportation of property and passengers by means of its railroad, and in connection with other lines of railroad, and by water, from one state and territory of the United States, to the other states and territories of the United States, and from points in the United States and in the State of Texas to foreign countries; and also, at said times, and long prior thereto, it was engaged in the transportation, in like manner, of property shipped from points in the United States and in the State of Texas, to foreign countries, and carried from such place and places in the United States, to a port of trans-shipment and was especially engaged in the business of transporting and delivering lumber from its station at Ruliff, in the State of Texas, to the docks and shipping wharves at Sabine,

145 Texas, a port of entry and trans-shipment also located on the waters of the Gulf of Mexico, in the State of Texas, which said lumber was intended to be, and was in fact shipped to a foreign country, and to states and territories of the United States, other than Texas.

That in the transportation, handling and delivery of passengers and property aforesaid, and especially in the transportation, handling and delivery of lumber to the port of trans-shipment aforesaid, near Sabine, Texas, and on the waters of the Gulf of Mexico, it was engaged in foreign and inter-state commerce, and was solely subject to, and governed by the Constitution and laws of the United States, and especially by the Act of Congress, commonly known as the Inter-state Commerce Act.

That Section 6 of said act required this defendant to print and keep open for public inspection, schedules and tariffs showing the

rates, fares and charges for the transportation of property, which had been established by it, for a through shipment, or a part of a through shipment when the property shipped should pass from one state to another, or from a point in the United States to a foreign country; and the rates and charges for shipments from a point in the United States to a port of trans-shipment, when such property is shipped to a foreign country. And further required that such rates, schedules and charges, when established, shall be filed with the Inter-state Commerce Commission of the United States; and that when so established and filed as aforesaid, that it should thereafter be unlawful to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of such property, or for any services in connection therewith, than as specified in such published schedules of rates, fares, and charges, and as may at the time be in force.

Defendant alleges that at the times mentioned in plaintiff's petition, and long prior thereto, that it had no joint interstate tariff of rates on lumber from Ruliff, Texas, over its line of railroad and that of its co-defendant to Sabine. That the rates applying on lumber moving from Ruliff by way of Beaumont and thence over the line of its co-defendant to Sabine, and shipped to a foreign country, and going to a foreign country, was the regular mileage tariff on file with the Inter-state Commerce Commission, and the same provided that for movements of lumber such as mentioned in plaintiff's petition for the distance between Ruliff and Beaumont and should be ten cents per hundred pounds, which this defendant says was the only legal rate known to it that could be quoted or received or collected by it for or on its account for plaintiff's lumber moving over its line of railroad from Ruliff to Beaumont.

And it was unlawful for the defendant to quote, demand or receive a greater or less rate than that provided for in the tariff aforesaid. That the only lawful rate applying on each and every shipment of lumber mentioned in plaintiff's petition, from Ruliff to Beaumont and thence to Sabine was ten cents per hundred pounds over this defendant's line, from Ruliff to Beaumont. That the defendant had the right to charge and collect for the transportation of each and every shipment of lumber mentioned in plaintiff's petition the sum of ten cents per hundred pounds, which right to do so demand and collect said sum of ten cents per hundred pounds it had under the constitution and laws, and under the authority of the United States, and especially Article 1, Section 8 of the Constitution of the United States, investing Congress with full and exclusive power to regulate commerce with foreign nations and among the several states, and the act of Congress commonly known as the Inter-state Commerce Act.

And further answering, defendant says that it not only had the right to collect the said sum of ten cents per hundred pounds as aforesaid, but that it was its duty under the constitution and laws of the United States to demand and collect said sum as aforesaid, and no less. And that in doing so it is entitled to the protection of its said rights under the constitution and laws

and authority of the United States, and especially Article 1, Section 8 of the said Constitution investing Congress with full and exclusive power to regulate commerce with foreign nations and among the several states, and the act of Congress, commonly known as the Inter-State Commerce Act.

Defendant further alleges that all of the lumber mentioned in plaintiff's petition, when delivered to defendant at Ruliff, Texas, was intended to be, and was in fact shipped to foreign countries, and that said lumber was carried from Ruliff, to a point in the United States, to a port of trans-shipment to-wit: the docks and shipping wharves, at Sabine, Texas, on the Gulf of Mexico, and was carried from thence to a foreign country, and points beyond the United States; that none of said lumber was intended for delivery locally, at Sabine, or at the docks or shipping wharves at Sabine, but the said lumber, when it left Ruliff, started on its journey to a foreign country and was in fact, carried from Ruliff, Texas, to the docks and shipping wharves at Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, and was carried from said port of trans-shipment to a foreign country. That the plaintiff was at and long prior to the shipments aforesaid, familiar with, and knew of the provisions of defendant's tariff applying on shipments of lumber from Ruliff to Beaumont and thence over the line of its co-defendant to Sabine for trans-shipment to a foreign country. That the movement of the lumber mentioned in plaintiff's petition was therefore, under the sole and exclusive control of the Interstate Commerce Commission of the United States, an agency created by the Congress of the United States to regulate and control inter-state and foreign commerce and the same was not subject to the rates, tariffs or rules of the Railroad Commission of Texas.

148 That on the dates mentioned in plaintiff's petition and for a long time prior thereto, plaintiff and other shippers in Texas and Louisiana, as well as other states, were engaged in manufacturing and shipping an immense amount and large volumes of lumber to Sabine, Texas, a port of trans-shipment on the waters of the Gulf of Mexico, and thence by water to foreign countries, and to points in the United States beyond the State of Texas. That said shipments and movements constituted a large, important, typical, continuous and constantly recurring course and current of commerce among the states and foreign countries, which was well known to both the plaintiff and defendant, and which was in the contemplation of the parties at the time of the delivery of said lumber to the defendant, at Ruliff, Texas. That at each and all of said times it was understood and contemplated by plaintiff and defendant that said lumber would be moved from said point at Ruliff, to a port of trans-shipment for export and delivery in foreign countries, and to points beyond the State of Texas. That all of said lumber mentioned in plaintiff's petition, was sold and shipped to purchasers located and residing in foreign countries, and beyond the United States. That it was never contemplated by either of the parties, the shippers, railroads or purchasers that said lumber would be stopped at Sabine, the destination named and claimed in plain-

tiff's petition longer than was necessary to accumulate a cargo to be loaded on a ship for a transportation to a foreign country. But it was contemplated and understood by all of the parties above mentioned that said lumber was for export, and would be delivered on the docks and shipping wharves at Sabine alongside ship for early and continuous trans-shipment and transportation to a foreign country. That said lumber was in fact transported to and delivered on the docks and shipping wharves at Sabine, a port of trans-shipment on the Gulf of Mexico, alongside ship, and was there unloaded from the cars onto said wharves and docks and re-loaded on 149 steamships and other water sailing crafts and shipped to a foreign country.

That in the handling and transportation of said lumber, the defendant transported the same from Ruliff to Beaumont, and delivered the same to its co-defendant, who transported the same from Beaumont to the docks and shipping wharves at Sabine, a port of trans-shipment on the Gulf of Mexico, where the same was unloaded from the cars onto the docks and shipping wharves, alongside ship, and then loaded into the ship and other water sailing crafts, and was in fact carried and shipped to a foreign country, beyond the United States; and in the performance of said service this defendants was engaged in interstate and foreign commerce, and was entitled to, and had the right, under the constitution and laws and authority of the United States, to demand, collect and receive the sum of ten cents per hundred pounds for carrying said lumber from Ruliff to Beaumont, as provided in the tariffs of the Company, on file with the Inter-state Commerce Commission, at Washington, and in force at said times. That the movements of said lumber from Ruliff to Beaumont over this defendant's line, thence over the line of its co-defendant, to the docks and shipping wharves at Sabine as aforesaid was inter-state traffic and commerce and was not subject to or controlled, either in the matter of rates or otherwise, by the Railroad Commission of Texas, and that the rates prescribed by the Railroad Commission of Texas, mentioned in plaintiff's petition had no application and could have no application to the lumber, or the movement or shipment of the lumber mentioned in plaintiff's petition, but the same was under the sole and exclusive control of the Congress of the United States, acting through, the inter-state Commerce Commission.

That the shipment and movement of the lumber mentioned in plaintiff's petition, constituted a part of a large typical and constantly recurring current of inter-state and foreign commerce, exclusively under the regulation and control of the 150 Congress of the United States and of the United States Inter-state Commerce Commission. That said shipment transportation and movement of said lumber, as aforesaid, as well as the charges for the services aforesaid, were, and are not subject to the regulation, control, tariff or rates prescribed by the Railroad Commission of the State of Texas. That the Railroad Commission of the State of Texas, had no right to, and in fact has made no rates applying

on export lumber from points in Texas to a port of trans-shipment on the coast of said state, and thence carried to a foreign country.

And further answering, herein this defendant says that the alleged Texas Commission rate of six and one half cents per hundred pounds of lumber from Ruliff over its line of railroad to Beaumont, and over the line of its co-defendant from Beaumont to Sabine and going to the docks and shipping wharves at Sabine, on the Gulf of Mexico, as applied to lumber that is carried to said port of trans-shipment and thence to foreign countries or to another state is illegal and void; that the enforcement of said alleged rate would necessarily affect the inter-state rates upon the same commodities from the same localities to the same destination. Owing to the peculiar geographical location of that part of the State of Texas traversed by defendant's line from Sabine River to Port Arthur the state freight rates necessarily effects all inter-state rates upon the same commodities from points in Louisiana, and especially from stations located upon the line of the of the Kansas City Southern Railway, as well as all other stations within said state, and this results as a practical and unavoidable matter in the conduct of business affairs, the location of ports of trans-shipment and the extent of territorial distribution from the various stations on defendant's line, in Texas. That the defendant's line of railroad, in connection with the line of its co-defendant, extends from Ruliff, a sta-

151 tion just over the line from Louisiana, in Texas, to Beaumont, Texas, and there connects, by a continuous line of railroad, with its co-defendant, which extends from Beaumont to Sabine. That lumber mills, located across the line from Texas, in Louisiana, are similarly situated with mills just over the line from Louisiana, in Texas; that the service, cost of service on movements of lumber from points in Louisiana, adjacent to Texas, are the same as the service and cost of service for the movement of lumber from points in Texas, adjacent to Louisiana, Sabine, Port Arthur, Galveston and other ports of trans-shipment on the Gulf of Mexico. Hence, when a state rate between points wholly within the State of Texas, is fixed lower than the inter-state rate, from nearby, contiguous points in Louisiana, where conditions are similar, and where the distances, costs of transportation, etc., are practically the same, the defendant is a ~~nd~~ be compelled to meet the state rate and lower or raise the inter-state rate, so as to treat said similar and adjacent localities, the same, or else discriminate between such localities, similarly situated. That the inter-state traffic constitutes a very substantial portion of the entire traffic, including the state traffic over defendant's line of railroad. That the inter-state rate on export lumber from stations in Louisiana, near the State of Texas, over defendant's line of railway to Beaumont and thence over the line of its co-defendant to Sabine, as established and filed with the Inter-State Commerce Commission is fifteen cents per hundred weight. If the rate on lumber from Ruliff over the defendant's line of to Beaumont and thence over the line of its co-defendant to Sabine is fixed by the Texas State Railroad Commission at six and one half cents and enforced against the defendants, it will

necessarily result in defendants being compelled to reduce the rate on lumber from said points in Louisiana to Sabine to the same, or at least practically the same amount, and will thus directly and necessarily affect and control the inter-state rates and tariffs on lumber from points in Louisiana to Sabine as well as to other ports in Texas, on the Gulf of Mexico.

That the mills situated just east and north of the Sabine River, in Louisiana, are in the same territory as the mills of plaintiff at and near Ruliff, Texas, and that the cost of transporting export lumber, and the service performed by the Railway Companies, from Ruliff, to Sabine, and from said points in Louisiana to Sabine are practically the same. To enforce said rate of six and one half cents per hundred pounds from Ruliff to Sabine where said lumber is for export, will force the defendant to transport the same kind of lumber from points in Louisiana to Sabine at the same rate, or at a greatly reduced rate from that now applying on lumber from nearby points in Louisiana to Sabine.

Congress has attempted to legislate upon the question of inter-state rates, and since, as a matter of fact, the said alleged rate of six and one half cents per hundred pounds from Ruliff, Texas to Sabine, Texas cannot be enforced without affecting inter-state rates, as above alleged, the said alleged act of the Railroad Commission of the State of Texas, in attempting to fix a rate of six and one half cents on export lumber from Ruliff to Sabine is unconstitutional and void and of no effect, and is violative of Section 8, Article 1 of the Constitution of the United States, and especially is this so when applied to lumber carried from points in Texas to the docks and shipping wharves at Sabine, on the Gulf of Mexico, a port of trans-shipment, and thence shipped to foreign countries.

And further answering herein, defendant says that that part of Article 4575 of the Revised Statutes of Texas, imposing a penalty of not less than \$125.00 or more than \$500.00 for extortion, as the same is defined in Article 4573 of said Revised Statutes, is excessive, harsh and unreasonable with no provision for a test of the validity of the act, except at the risk of incurring excessive and unreasonable fines, and is unconstitutional and void under the provisions of Section 13, Article 1 of the Constitution of Texas, and

especially so if such fines and penalties are applied to each shipment of freight made in this state, and would, within two years amount to more than the entire value of the defendant's whole property devoted to such use in this State. That if the penalties provided in Article 4575 were intended to apply to and to be recovered for each car load or separate shipment of freight as sued for herein, the act imposing such fines is contrary to Section 13, Art. 1 of the Constitution of this State, because the same is harsh, unreasonable and excessive, and therefore void.

Further answering herein, defendant says that it was informed and believed that the lumber mentioned in plaintiff's petition was for export to a foreign country, and that when the same left the mills of plaintiff at and near Ruliff, Texas, that the same was on its way to a foreign country and constituted foreign commerce, and

that the rate of ten cents per hundred pounds from Ruliff to Beaumont, same being the lawful and regular published rate applying to on inter-state and foreign shipments of lumber, the same being on file with the Inter-state Commerce Commission, was the only rate that defendant could legally demand and collect or receive.

That it had no other rate or tariff applying on through shipments of lumber from Ruliff to Sabine over its own and co-defendant's line of railway, but that it did have on file with the Inter-state Commerce Commission a tariff prescribing and fixing the rate on export lumber and on the plaintiff's shipments of lumber from Ruliff to Beaumont, which was ten cents per hundred pounds. That it acted in good faith in quoting said rate to its co-defendant, believing that the same was lawful, and that to collect a less rate would subject it to prosecutions and penalties for violating the Inter-state Commerce Act of the Congress of the United States. That if it was mistaken in that, then it says that said charges and collections of said rate *was* made under a mistake of fact, and *was* innocently made, and with no intention to violate any rate, rule or requirement of the Railroad Commission of Texas, and that therefore, it is not liable for the penalties sued for herein.

Further specially answering herein, this defendant says that if the Railroad Commission of Texas had authority to make and prescribe a rate on plaintiff's lumber, mentioned in its petition, from Ruliff to Sabine, which it does not admit, but denies, this defendant says that its station of Ruliff, mentioned in plaintiff's petition, is south of the Louisiana-Texas State Line, and that Sabine is a station on the Texas & New Orleans Railroad, and that the correct and lawful rate as prescribed by the Railroad Commission of Texas, on lumber from Ruliff, Texas, to all stations on the Texas & New Orleans Railroad at the times mentioned in plaintiff's petition, was and is twelve and one half cents per hundred pounds. That the Railroad Commission of Texas, in fixing rates on lumber from points on the Texarkana & Ft. Smith Railway, south of the Louisiana-Texas State line to all stations on the Texas & New Orleans Railroad, has made, promulgated and published a special through rate, which order of said Texas Railroad Commission is as follows:

"Rates for the transportation of lumber and articles taking the lumber rates, in car loads, from all points on the Texarkana & Ft. Smith Railway South of the Louisiana-Texas State Line, to all stations on the Galveston, Harrisburg & San Antonio Railway, the Houston & Texas Central Railroad and the Texas & New Orleans Railroad, the same as are now in effect from Beaumont except that the minimum through rate shall be twelve and one half cents per hundred pounds."

That said rate, rule and order of said Commission is a special rate, rule and order, and is not affected, modified or repealed by any of the general rules of said Railroad Commission, and for further answer this defendant adopts all the allegations in the answer of its co-defendant that are not contained herein.

Wherefore, by reason of the foregoing premises and pleas, it

prays to be discharged, and that it recover of plaintiff all
155 costs.

S. W. MOORE &
HIRAM GLASS,
ROBERTSON & WHITAKER,
Attorneys for Defendant.

Endorsed: "No. 6071. Sabine Tram Company vs. T. & F. S. Ry. Co. and T. & N. O. Ry. Amended answer. Filed January 20th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cotnam, Deputy."

Plff's Supplemental Petition Replying to Tex. & Ft. S. Ry. Co.

In the District Court of Jefferson County, Texas.

No. 6071.

SABINE TRAM COMPANY
VS.
T. & N. O. R. R. COMPANY ET AL.

And now comes the Sabine Tram Company under leave of the court first had and obtained, and files this its supplemental petition in reply to the answer of the Texarkana & Fort Smith Ry. Company, in this cause, and replying to the same, plaintiff says:

1.

Plaintiff specially excepts to that portion of said defendant's answer beginning on page 7 with the words "and further answering herein this defendant says" etc., and ending with the words "and thence shipped to foreign countries" on page 10 of said answer, and for ground of exception shows that said portion of said answer is merely argumentative and merely states grounds of objection to the reasonableness of the rates prescribed by the Railroad Commission of Texas as to intra-state business which cannot be inquired into in this proceeding between a private person and the railroads affected by said rate.

And said pleading is insufficient for the further reason that the right of the Railroad Commission of Texas to regulate and fix rates as to intra-state business cannot be affected by the result and effect, even though injurious on shippers outside of the State. And therefore such facts and reasons as are set out in said part of said
156 defendant's answer can constitute no defense.

2.

For further special exception plaintiff shows that that part of Ft. Smith's defendant's answer occurring on page 10 with the words "And now for further answer herein" and ending with the words

"and therefore void"; same being the second paragraph on said page, is insufficient in law to constitute any defense because it appears that the reasonableness of the penalties fixed having been passed upon by the Legislature, cannot be inquired into in this proceeding.

3.

For further special answer herein, if required, plaintiff denies all and singular the allegations contained in said answer of the Texarkana & Ft. Smith Ry. Company, except such as are consistent with the allegations contained in plaintiff's pleading, and of this it puts itself upon the country.

GREER, MINOR & MILLER,
Attorneys for Plaintiff.

Endorsed: "No. 6071. Sabine Tram Co. vs. T. & N. O. R. R. Co., et al. Plaintiff's first supplemental petition replying to defendant, Texarkana & Ft. Smith Ry. Co., Filed January 20th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex. By Joe Cottam, Deputy."

Plff's First Supplemental Petition Replying to Def't T. & N. O. R. R. Co.

No. 6071.

In the District Court of Jefferson County, Texas, 60th District.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

And now comes the plaintiff, Sabine Tram Company, under leave of the court first had and obtained, and files its first supplemental petition in reply to the answer of the T. & N. O. Railroad Company filed herein, and answering the same this plaintiff says:

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1.

Plaintiff excepts generally to the defenses set up in said answer in paragraphs fourteen (14) to eighteen (18) inclusive, for the reason that neither of them shows any defense, and of this it prays judgment of the court.

2.

This plaintiff specially excepts to the fourteenth paragraph of said answer, and for ground of exception says that it is merely argumentative, states legal conclusions and fails to show any ground of defense, in that the mistake plead as a defense was not the mistake of any fact that would excuse, but merely a mistake as to the alleged intent of the shipper or purchaser of the lumber, of this plaintiff prays judgment of the court.

3.

Plaintiff further specially excepts to the fifteenth (15) paragraph of said answer, and for grounds of exception shows that it is insufficient to constitute any defense and sets up no defense whatever; for that the resulting injustice to some shipper in Louisiana would not constitute any reason why the Railroad Commission of Texas should not regulate the rates as to shipments within Texas, and of this plaintiff prays judgment of the court.

4.

Plaintiff further specially excepts to that part of the sixteenth (16) paragraph of said answer beginning with the words "Defendant further" and ending with the words "he is guilty of no offense" and for grounds of exception shows that said portion of said answer is merely argumentative and states no legal defense, and of this plaintiff prays judgment of the court.

5.

Plaintiff further specially excepts to that portion of the sixteenth (16) paragraph of defendant's answer on page twenty four
158 (24) beginning with the words "and this defendant says" and ending with the said paragraph, and for grounds of exception shows that said part of said answer constitutes no defense, in that it fails to allege a mistake as to any matter of fact that would excuse or mitigate and on the contrary merely alleges a mistake of law, and of this plaintiff prays the judgment of the court.

6.

Plaintiff further specially excepts to the seventeenth (17) paragraph of said answer, and for grounds of exception shows that said paragraph sets up no defense in that it is merely argumentative, states no facts, but merely sets out legal conclusions, and said pleading is too general, vague and indefinite to constitute any defense.

7.

This plaintiff further specially excepts to the eighteenth (18) paragraph of said answer, and for grounds of exception shows that said paragraph constitutes no defense to this action, and on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railroad Commission of Texas in an action between Sabine Tram Company, plaintiff herein, a private party, and the Railway Companies affected by said rates in violation of Art. 4564 of the Revised Statutes of the State of Texas, same being section V of an act passed by the twenty second Legislature of the State of Texas, entitled "An Act to establish a Railroad Commission for the State of Texas" etc., and appearing on page 58 of the Acts of 1891; and of this plaintiff prays the judgment of the court.

8.

For further answer herein, if required, this plaintiff denies all and singular the allegations contained in said answer of defendant except such allegations as are consistent *consistent* with those set up by plaintiff in its pleadings, and of this it puts itself upon the country.

GREER, MINOR & MILLER,
Attorneys for the Plaintiff,
Sabine Tram Company.

Endorsed: "No. 6071. Sabine Tram Company vs. Texas & New Orleans R. R. Co., et al. Plaintiff's first supplemental petition replying to defendant T. & N. O. R. R. Co. Filed January 20th, 1908. B. Boykin, C. D. C. Jefferson Co. Tex., by Joe Cottam, Deputy.

Court's Charge.

In the District Court of Jefferson County, Texas, 60th Judicial District,

No. 6071.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

GENTLEMEN OF THE JURY: After full argument by able counsel for all parties to this suit, this court has decided that the shipments of lumber which furnishes the subject matter of this suit was an intra-state transaction, and that, therefore, the rates promulgated and prescribed by the Railroad Commission of Texas have application to such shipment, and that the rights and liabilities of the parties to this suit must be governed and tested by the rules and rates promulgated by said Railroad Commission of Texas and by the laws of the State of Texas pertaining to the enforcement of such rules and rates, and since it appears, from the undisputed evidence in this case, that the defendants, Texarkana & Fort Smith Railway Company, and the Texas & New Orleans Railroad Company, did in fact collect from the plaintiff the sum of seventeen hundred and eighty eight (\$1788.00) dollars in excess of the amount that said defendants should have collected from plaintiff as freight charges for the shipments of lumber involved in the transaction which furnishes the subject matter of this suit, you are instructed to return a verdict in favor of the plaintiff, Sabine Tram Company, against the said defendants, jointly for said sum of \$1788.00, with interest on that amount from the first day of January A. D. 1907, to the present time, at the rate of six (6%) per cent per annum.

II.

You are further instructed that under the law of this State, as this court understands it, and under the undisputed facts in this

case, the said defendants, in consequence of said collection of said excessive freight charges, have become liable to pay plaintiff a sum of money in the nature of penalties of not more than twenty five hundred (\$2500.00) dollars nor less than six hundred and twenty five (\$625.00) dollars, and therefore, in addition to the said sum, of \$1788.00 and interest thereon as aforesaid, you may allow plaintiff any sum by way of penalties not to exceed \$2500.00 nor to be less than \$625.00. From the foregoing you will observe that as the amount of penalties to be allowed against defendants the same rests in the sound discretion of the jury to be arrived at from all the facts in evidence before you, and in this connection, the court desires to admonish the jury to not be actuated by any feeling of prejudice or harshness towards either of defendants in fixing the amount of penalties to be recovered in this case, but the jury will not assume from this instruction that the court has assumed that the jury would be actuated purposely by anything or consideration other than to render a fair and just verdict in this case, but only so admonishes the jury out of precaution.

I further instruct you that it is in evidence before you that the defendants, or rather their freight agents, in fixing the rates which they considered to apply to the shipments in question, and in making the collection of freight charges therefor, acted under instructions and legal advice in doing so, and while they were mistaken in so acting, and while such mistake is only a mistake of law

161 and not a mistake of fact and therefore does not excuse in law, still you are instructed that you are at liberty to and should consider the fact, in arriving at the amount of penalties in this case, that such freight agents, in making the amount of collections in question, were acting under legal advice at the time.

III.

You are further instructed to let your verdict show the amount of overcharge above mentioned separately from the amount that you may assess as penalties, and sign the same by your foreman.

L. B. HIGHTOWER, Jr., Judge.

Endorsed: "No. 6071. Sabine Tram Co., vs. T. & N. O. R. R. Co., et al. Charge of the court. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No. 1, Asked by Dep'ts.

SABINE TRAM CO.

VS.

TEXAS & N. O. R. R. Co. et al.

GENTLEMEN OF THE JURY: You are instructed to return a verdict for the defendants.

Asked by defendants H. M. Garwood, Parker & Hefner, Will Orgain & Hiram Glass, attys. for defendants.

Refused.

L. B. HIGHTOWER, Jr., Judge.

Endorsed: "No. 6071. Sabine Tram Co. vs. T. & N. O. R. R. Co. et al. Special charge No. 1, asked by both def'ts. Filed January 24th, 1908 B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No. 2, Asked by Def'ts.

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SABINE TRAM COMPANY

vs.

T. & N. O. R. R. Co. et al.

GENTLEMEN OF THE JURY: You are instructed that the plaintiff, in no event can recover more than one penalty of not less than one hundred and twenty five dollars nor more than five hundred dollars.

Asked by defendants H. M. Garwood, Parker & Hefner, Orgain & H. Glass, def'ts. att'ys.

Refused.

L. B. HIGHTOWER, JR., Judge.

Endorsed: "#6071. Sabine Tram Co. vs. T. & N. O. R. R. Co. et al. Special charge No. 2 asked by both def'ts. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No. 3, Asked by Def'ts.

SABINE TRAM CO.

vs.

TEXAS & N. O. R. R. Co. et al.

GENTLEMEN OF THE JURY: You are instructed that plaintiff cannot recover any penalty against the Texarkana and Ft. Smith Railway Company and as to penalties you will find for that Company, that is allow, or find, no penalty against it.

Asked by def'ts, Hiram Glass, defts. atty. for T. & Ft. S. Ry. Co

Refused.

L. B. HIGHTOWER, JR., Judge.

Endorsed: "#6071. Sabine Tram Co., vs. T. & N. O. R. R. Co. et al. Special charge No. 3 asked by T. & Ft. S. Ry. Co. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

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Special Charge No. 4, Asked by Def'ts.

SABINE TRAM CO.

vs.

T. & N. O. R. R. Co. et al.

Defendant Texas & New Orleans R. R. Company asks the court to instruct the Jury as follows:

GENTLEMEN OF THE JURY: There are no facts in evidence which will justify you in returning a verdict for penalties in any amount against the Texas & New Orleans Railroad Company and you are instructed to find a verdict in its favor on that issue.

TEXAS & NEW ORLEANS R. R. CO.,
By PARKER & HEFNER, Att'ys.

Refused.

L. B. HIGHTOWER, JR., Judge.

Endorsed: "#6071. Sabine Tram Co., vs. T. & N. O. R. R. Co. Charge No. 4 asked for by T. & N. O. Ry. Co. & refused. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No. 5, Asked by Defts.

No. 6071.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS R. R. Co. et al.

The defendants request the court to instruct the Jury as follows:

GENTLEMEN OF THE JURY: You are instructed that the uncontradicted testimony shows herein that defendants have legally established, filed with the Interstate Commerce Commission and published tariffs of rates covering shipments of lumber in car lots from Ruliff, Texas, to Sabine, Texas, via their respective routes for export to foreign countries other than Mexico; that the ship-

164 ments in controversy did move in car load lots from Ruliff, Texas, to the port of Sabine, Texas, where same was shipped to Europe; that defendants applied the rates so published upon these shipments. You are instructed that if defendants, their servants and agents, believed in good faith, that these shipments so transported were foreign commerce, and so believing applied said rates in good faith, then the same constitutes a mistake of fact which will excuse the defendants from penalties for such charge, and if you so believe you will find for each of the defendants, upon the issue of penalties herein.

TEXARKANA & FORT SMITH
RAILWAY CO.,

By HIRAM GLASS, Att'y.

TEXAS & NEW ORLEANS
RAILROAD CO.,

By PARKER & HEFNER, Att'ys.

Refused.

L. B. HIGHTOWER, JR., Judge.

Endorsed: "#6071. Sabine Tram Company vs. Texas & New Orleans Railroad Co. et al. Spec. Charge No. 5. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No. 6, Asked by Defts.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS R'Y Co. et al.

The defendants request the court to charge the Jury as follows:

GENTLEMEN OF THE JURY: You are charged herein that the defendants, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company have published and filed with the Interstate Commerce Commission tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of the defendant, Texas & New Orleans Railroad Company, situated adjacent to the station of Sabine, Texas, on the road of the latter Company, when intended for export 165 to foreign countries other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the Interstate tariffs so filed, and, if you believe from the evidence, that the defendant, Texas & New Orleans Railroad Company, and its agent acting in that behalf, believed in good faith, and acting upon reasonable grounds for that belief, that the shipments in controversy were foreign shipments and intended for export to foreign countries other than Mexico, then in that event you will find for the defendants upon the issue of penalties heretofore submitted to you by the court.

TEXARKANA & FORT SMITH R'Y

CO. AND

TEXAS & NEW ORLEANS R. R. CO.,

Defendants,

By HIRAM GLASS & PARKER &
HEFNER, Att'ys.

Refused.

L. B. HIGHTOWER, Jr., Judge.

Endorsed: "#6071. Sabine Tram Co. vs. Texas & New Orleans R. R. Co. Special charge No. 6. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Special Charge No 7, Asked by Def'ts.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS R'Y Co. et al.

The defendants request the court to charge the Jury as follows:

GENTLEMEN OF THE JURY: You are charged that the defendants in this case, prior to the shipments of in controversy, had duly and legally established, filed with the Interstate Commerce Commission and published Tariffs of rates covering shipments of lumber from Ruliff, Texas to Sabine, Texas, over their respective 168 lines in car load lots for export to foreign countries other than Mexico. That the freight charges herein collected were charged and collected under and in pursuance of such tariffs, and that the shipments involved actually moved in carload lots in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment, and were thence actually exported to Europe. You are instructed, therefore, as a matter of law, that it was the duty of defendants to charge and collect no other freight charges than those prescribed in the tariffs aforesaid, and that, if they had have charged any other rate than those prescribed in said published tariff, that they would have been subjected to the penalties prescribed in the act to regulate interstate and foreign commerce and the acts amendatory thereof. You are therefore instructed that, regardless of whether the lumber transported constituted foreign or interstate commerce it was defendants' duty to apply the tariffs so established and no other tariffs, and you will therefore find for the defendants, both upon the issue of the actual overcharge demanded and the penalties sued for.

TEXARKANA & FORT SMITH RAIL-
WAY CO.,

By HIRAM GLASS, *Att'y.*

TEXAS & NEW ORLEANS RAIL-
ROAD CO.,

By PARKER & HEFNER, *Att'ys.*

Refused.

L. B. HIGHTOWER, Jr., *Judge.*

Endorsed: "#6071. Sabine Tram Co. vs. Texas & New Orleans R. R. Co. Special charge No. 7. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Plff's Special Charge No. 1.

In District Court, Jefferson County, Texas.

No. 6071.

SABINE TRAM CO.

vs.

T. & N. O. R'y Co. et al.

167 GENTLEMEN OF THE JURY: You are instructed that the plaintiff is entitled to recover, in addition to the overcharges, as defined in other portions of the charge, of the court, a penalty of not less than \$125.00 nor more than \$500.00 on account of each bill of lading on which you may believe from the evidence that the defendants collected overcharges, that is, over 6½ cents per hundred pounds as on the shipments in question. And you should return a verdict for said overcharges and also penalties in such amount as you may believe from the evidence should be assessed, within said limitations above set out.

Refused.

L. B. HIGHTOWER, JR., Judge.

The plaintiff requests the court to give the foregoing special charge No. 1.

GREER, MINOR & MILLER,

Att'ys for Plaintiff.

Endorsed: "No. 6071. Sabine Tram Co. vs. T. & N. O. Ry. Co., et al. Special charge No. 1, requested by plaintiff. Greer, Minor & Miller, Att'ys for Pl'ff. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co., Tex., By Joe Cottam, Deputy."

Plff's Special Charge No. 2.

In the District Court of Jefferson County, Texas, 60th District.

No. 6071.

SABINE TRAM COMPANY

vs.

T. & N. O. R. R. Co. et al.

GENTLEMEN OF THE JURY: You are instructed that the plaintiff is entitled to recover of the defendants a penalty of not less than \$125.00 nor more than \$500.00 on each shipment on which the defendants collected an overcharge.

But you are instructed that in this connection the term "ship-

ment" is to be construed by you subject to the following instructions:

168 If several cars were tendered by the Plaintiff to the defendant Texarkana & Fort Smith Railway Company together, and so received for transportation, a receipt of such cars together would constitute but one act, and you must consider the lumber so received in several cars together (if you believe from the evidence that any were so received) as constituting one shipment, even though there might have been several bills of lading issued therefor; on account of which plaintiff would be entitled to recover only one penalty for said cars so received together.

Refused.

L. B. HIGHTOWER, JR., *Judge.*

The plaintiff requests the court to give the foregoing charge to the Jury (called for convenience plaintiff's special charge No. 2) in the event special charge No. 1 is refused.

GREER, MINOR & MILLER,
Att'ys for Plaintiff.

Endorsed: "6071. Sabine Tram Co. vs. T. & N. O. R. R. Co., et al. Special charge No. 2 requested by plaintiff in the event special charge No. 1 is refused. Greer, Minor, & Miller, att'ys for pl'ff. Filed January 24th, 1908. B. Boykin, C. D. C. Jefferson Co. Tex.; By Joe Cottam, Deputy."

Verdict.

We the Jury find for the plaintiff, Sabine Tram Co., against the defendants T. & Ft. S. Ry. Co. and T. & N. O. Ry. Co., jointly the sum of seventeen hundred and eighty eight (\$1788.00) dollars with interest at the rate of 6% per annum from January 1st, 1907 to the present time.

Second.

We further find for the above said plaintiff against the above said defendants, the sum of Seventeen hundred and eighty five (\$1785.00) dollars penalties.

R. C. DAVANT,
Foreman.

Endorsed: "6071. Sabine Tram Co. vs. T. & N. O. Ry. Co.
169 Verdict. Filed January 24, 1908. B. Boykin, C. D. C. Jefferson Co. Tex., By Joe Cottam, Deputy."

Judgment.

In the District Court of Jefferson County, Texas, 60th District.

No. 6071.

SABINE TRAM COMPANY

vs.

T. & N. O. R. R. Co., et al.

JANUARY 20th, 1908.

This cause was this day called for trial and all parties appeared by their respective attorneys and announced ready for trial, the general and special exceptions of both defendants being presented were overruled and plaintiff's exception No. 7 to the answer of the T. & N. O. defendant was sustained to which rulings each defendant excepted, whereupon, a jury of twelve good and lawful men, composed of R. C. Davant, and eleven others, were duly empaneled and sworn, and the cause proceeded to trial and continued on trial until January 24th, 1908. The pleadings having been read, the evidence heard, and arguments of counsel, the court charged the Jury, and thereupon on January 24th, 1908, the jury retired to consider of their verdict; and after due deliberation, on the said date, returned into open court the following verdict, to-wit:

"We the jury find for the plaintiff, Sabine Tram Co., against the defendants T. & Ft. S. Ry. Co. and T. & N. O. Ry. Co., jointly, the sum of seventeen hundred & eighty eight (\$1788.00) dollars with interest at the rate of 6% per annum from Jan. 1st, 1907, to the present time.

Second.

We further find for the above said plaintiff against the above said defendants the sum of seventeen hundred and eighty five (\$1785.00) dollars penalties.

R. C. DAVANT,
Foreman."

Therefore, in accordance with said verdict, it is ordered, adjudged and decreed by the court that the plaintiff, Sabine Tram Company, a corporation, do have and recover of the defendants Texarkana & Ft. Smith Railway Company, a corporation, and the Texas 170 & New Orleans Railroad Company, a corporation, jointly, the sum of Seventeen Hundred and eighty eight (\$1788.00) dollars, as overcharges, together with interest thereon at the rate of 6% per annum from January 1st, 1907, to the present time, which said overcharges and interest amount, in the aggregate to nineteen hundred two and 43/100 (\$1902.43) dollars; and that said plaintiff further recover of said defendants jointly the further sum of seventeen hundred and eighty five (\$1785.00) dollars, as penalties, mak-

ing a total amount of recovery of three thousand six hundred eighty seven and 43/100 (\$3687.43) dollars.

It is further ordered and adjudged that the said sum of One thousand nine hundred two and 43/100 (\$1902.43) dollars, representing the overcharges and interest to date, shall bear interest from this date at the rate of 6% per annum; but the said sum of seventeen hundred eighty five (\$1785.00) — representing the penalties, shall not bear interest.

It is further ordered, adjudged and decreed that the plaintiff recover of the defendants all costs in this behalf expended; for all of which let execution issue.

Defts' Motion for New Trial.

In the District Court of Jefferson County, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA & FT. SMITH RAILWAY COMPANY.

Herein come the defendants, Texas & New Orleans Railroad Company, and the Texarkana & Fort Smith Railway Company, defendants herein, and move the court that the verdict and judgment herein rendered and entered on January 24th, 1908, be set aside and a new trial granted them, and for cause defendants say:

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I.

The court erred in overruling and failing to sustain the plea in abatement filed by the Texas & New Orleans R. R. Co., filed herein, wherein and whereby it is set up and alleged that under and by virtue of the provisions of Art. 4568 of Chap. 13, Title 94, of the Revised Statutes of Texas, the exclusive jurisdiction is given to the Railway Commission of Texas to hear and determine in the first instance complaints of this nature and to award damages due for such violation in case it, the said Railway Commission, finds that there has been such violation.

II.

The court erred in overruling and failing to sustain special exception contained in Par. 3 of the amended original answer of the defendant, Texas & New Orleans R. R. Co., to the effect that it appears from plaintiff's petition that plaintiff seeks to recover in this suit damages for alleged violation by defendants of the laws of the State and the regulations of the Railway Commission, in that it is alleged that defendants charged another and different rate for the shipments involved in the controversy set up in this suit from the

rate previously fixed by the Railway Commission of the State of Texas, and alleged by plaintiff to be applicable thereto, which damages, if the facts be as plaintiff alleges, are such as can be awarded upon a hearing before the Railway Commission of Texas, and the said Railway Commission of Texas, under the law, has sole and exclusive authority to grant relief sought by plaintiff herein as regards such damages, and this court has no jurisdiction to hear and determine such cause of action, as appears from the allegations in plaintiff's petition.

III.

The court erred in overruling and failing to sustain special exception contained in Par. 4 of the amended original answer of the defendant, Texas & New Orleans Railroad Co., and the special exception of the defendant, Texarkana & Fort Smith Ry. Co., to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railway Commission of Texas, does not permit the cumulation of penalties thereunder, and that under the allegations in the plaintiff's petition it was entitled to recover only one penalty of not less than one hundred twenty five (\$125.00) dollars nor more than Five hundred (\$500.00) dollars.

IV.

The court erred in overruling and failing to sustain special exception of defendant, Texas & New Orleans R. R. Co., as contained in Par. 5 of the amended original answer of said company, to the effect that if Art. 4575 of the Revised Statute of the State of Texas, being Section 17 of the Act of April 3d, 1891, creating a Railway Commission, and under the provision of which this action is brought, permits the cumulation of penalties for alleged successive acts of overcharge committed prior to the institution of the suit, and that then and in that event the same is invalid and void as in contravention of Sec. 13, Art. 1, of the Constitution of the State of Texas, which provides that: "Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted, all courts shall be open and for every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law"; and in contravention of the 14th amendment to the Constitution of the United States, which provides: "Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

V.

The Court erred in sustaining special exception No. 7, contained in plaintiff's first supplemental petition, filed herein January 20th, 1908, to Par. 18 of the first amended original answer of defendant Texas & New Orleans R. R. Co., as follows:

"Plaintiff further specially excepts to the 18th paragraph

of said answer, and for grounds of exception shows that said paragraph constituted no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railway Commission of Texas in an action between the Sabine Tram Company, plaintiff herein, a private party, and the railway Company, affected by said rates, in violation of Art. 4564 of the Revised Statutes of the State of Texas, same being section 5 of an act passed by the 22nd Legislature of the State of Texas, entitled "An Act to establish a Railway Commission for the State of Texas, etc.—and appearing on page 58 of the Acts of 1891," for the reason that in an action to recover penalties for an alleged violation of the rates, order, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory is to deprive such defendants of due process of law and deny them the equal protection of the law, contrary to the 14th amendment to the Constitution of the United States.

VI.

The court erred in failing to direct a verdict in favor of the defendants herein, and in failing and refusing to give special charge No. 1, requested by defendants, directing the jury to return a verdict in favor of the defendants and each of them.

VII.

The court erred in assuming and finding as a matter of law that the commerce affected by the shipments in controversy herein was intra-state commerce and not foreign commerce, such matter being an issuable fact under the evidence herein to be determined by the jury.

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VIII.

The court erred in finding as a matter of law that the Railway Commission rate applicable to the shipments involved herein was 6½ cts. per 100 lbs., and not 12½ cts. per 100 lbs., from Ruliff, Texas, the point of origin, to Sabine, Texas, on the Texas & New Orleans R. R., the uncontradicted evidence showing herein that the lawful rate under the rules and regulation of the Railway Commission of Texas, if said shipments were domestic or intra-state commerce, was at the time of said shipments 12½ cts. per 100 lbs., and not 6½ cts. per 100 lbs.

IX.

The court erred in assuming and finding as a matter of law that the lawful commission rate in effect at the time involved herein and applicable to the shipments involved in this controversy was 6½ cts. per 100 lbs., from Ruliff, Texas, the point of origin, on the Texas-arkana & Ft. — Ry. Co., defendant, to Sabine, Texas, a station on the

line of railway of the Texas & New Orleans R. R. Co., defendants, was $6\frac{1}{2}$ cts. per 100 lbs. and not $12\frac{1}{2}$ cts. per 100 lbs., the question as to what was the lawful rate in force under and by virtue of the orders of the Railway Commission of Texas being an issue of fact to be determined, under the evidence in this case, by the Jury.

X.

The court erred in holding that plaintiff, if entitled to recover actual damages as for an overcharge, was entitled to recover in the sum of not less than \$825.00 and not more than \$2500.00 and in so charging the jury, for the reason that the uncontradicted testimony herein, and the law under which plaintiff seeks to recover, does not permit the recovery of more than one penalty of not less than \$125.00 nor more than \$500.00 in any event.

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XI.

The court erred in failing and refusing to give special charge No. 2, asked by the defendants, to the effect that plaintiff in no event can recover more than one penalty of not less than \$125.00 nor more than \$500.00 in this cause.

XII.

The court erred in failing and refusing to give special charge No. 3, asked by the defendant, Texarkana & Ft. Smith Ry. Co., to the effect that plaintiff cannot recover any penalty against the Texarkana & Ft. Smith Ry. Co., and directing the jury to find a verdict in favor of that company on said issue.

XIII.

The court erred in failing and refusing to give special charge No. 4, requested by the defendant, Texas & New Orleans R. R. Co., to the effect that there are no facts in evidence which will justify the jury in rendering a verdict for penalties in any amount against the Texas & New Orleans R. R. Co., and instructing them to find a verdict in its favor upon that issue.

XIV.

The court erred in holding as a matter of law, that the action of defendants in applying the Interstate Commerce Commission rates, regularly established, filed and published by defendants, to the shipments in controversy herein, instead of the rates prescribed by the Railway Commission of Texas, if a mistake, was a mistake of law and not of fact, and in refusing to submit to the jury the issue as to whether the defendants herein, in applying the rates in controversy, were acting under an honest belief that the rates applied to the shipments in controversy were the lawful rates; and in failing and refusing to give special charge No. 5, requested by defendants, to the effect that if the defendants, their servants and agents, believed in good faith that the shipments in con-

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troversy herein were foreign commerce, and so believing, applied said rates in good faith, that the same constituted a mistake of fact which would excuse defendants from the infliction of the penalties sued for.

XV.

The court erred in failing and refusing to give special charge No. 6, asked by defendants, to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas, & New Orleans R. R. Co., situate adjacent to the station of Sabine, Texas, on a road of the latter company, when intended for export to foreign countries, other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the Interstate tariffs so filed. And that, if they believed from the evidence, that the defendant, Texas & New Orleans R. R. Co., and its agent acting in that behalf, believed in good faith and acting upon reasonable ground for that belief, that the shipments in controversy were foreign shipments and intended for export to foreign countries other than Mexico, then in that event they should find for the defendant upon the issue of penalties therefore submitted by the court.

XVI.

The court erred in failing and refusing to give defendants' special charge #7, to the effect that defendants, having prior to shipments in controversy, duly and legally established, filed with the Interstate Commerce Commission and published tariffs of rates covering shipments of lumber from Ruliff, Texas, to Sabine, Texas, over their respective lines in carload lots for export to foreign countries, 177 other than Mexico that the freight charges herein collected were charged and collected under and in pursuance of such tariffs, and that the shipments involved actually moved in carload lots in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment and were thence actually exported to Europe. That, as a matter of law; it was the duty of defendants to charge and collect no other freight charges than those prescribed in the tariffs aforesaid, and if they had *have* charged any other rate than that prescribed, they would have been subjected to penalties prescribed in Act to Regulate Interstate and Foreign Commerce and the Acts amendatory thereof. And that, regardless of whether the lumber transported constituted foreign or interstate Commerce or intra-state or Domestic commerce, it was the defendants' duty to apply the tariffs so established and no other tariff, and that, therefore, they should find a verdict for the defendants, both upon the issue of the actual overcharge demanded, and the penalties sued for.

XVII.

The verdict herein is grossly excessive in amount in that the jury found as penalties for said alleged overcharges the sum of \$1785.00,

when, under the charge of the court the maximum amount permitted to be recovered is \$2500.00 and the minimum amount \$625.00, the uncontradicted testimony herein showing that if the charges demanded and received were in excess of those permitted to be charged under the regulations of the Railway Commission of Texas, that said overcharges *was* made upon reasonable grounds for a belief that the charge made and collected was the only legal rate applicable to such shipments, and the servants and agents of defendant, upon reasonable grounds, believed that they had the right and that it was their duty to collect the rate so charged and received.

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XIX.

The court erred in rendering and entering judgment for any amount against defendants herein, for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce, moving from a point within the United States through a port of trans-shipment to foreign countries, and that these defendants herein, prior to said shipments, had legally established filed with the Interstate Commerce Commission, and published schedules and tariffs of rates applicable to such shipments, and that the rates charged and collected by defendants were the rates so established in said tariffs, and schedules, filed and published, and were the legal rates applicable thereto.

XX.

The verdict of the jury and the judgment of the court is erroneous because the Constitution of the United States and especially Art. I, sec. 8, thereof and the act of Congress commonly known as the Interstate Commerce Act, approved February 4th, 1887, and amendments thereto, authorize and permit the defendants to charge and collect the rates named in the tariffs promulgated and filed with the Interstate Commerce Commission, and said verdict and judgment is a denial of that right so claimed by defendants under said Constitution and Laws of the United States.

XXI.

The court erred in holding and charging the jury, as a matter of law, that plaintiff was entitled to recover five (5) penalties, amounting in the aggregate to not less than \$625.00 nor more than \$2500.00.

XXII.

The court erred in permitting a recovery for penalties under the facts in this case, for the reason that, under the constitution and laws of this State, no penal law which is so definitely framed and of such doubtful construction that it can't be understood, either from the language in which it is expressed or from some other written law of the State, can be enforced.

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XXIII.

The court erred in permitting the recovery of penalties in any amount herein, and the verdict and judgment rendered herein is erroneous in finding for plaintiff upon the issue of penalties herein, in this: that the uncontradicted testimony shows herein that the shipments by plaintiff declared upon moved in a continuous and unbroken journey from Ruliff, Texas, the point of origin, through Sabine, a port of trans-shipment, to a foreign port; that prior to said shipments, defendants had promulgated and filed with the Interstate Commerce Commission tariffs or rates applicable to such movements, and that defendants actually applied such rates to such movements; that defendants, under Act to Regulate Commerce, approved February 4th, 1887, and acts amendatory thereof, and the act of Congress approved February 19th, 1903, commonly known as the Elkins Act, and acts amendatory thereof, was compelled under the threat of severe penalties, to apply said tariff and no other tariffs, and that under the Railway Commission act of Texas, the charging and receiving of freight charges in excess of the rates prescribed by said commission, is punishable by penalty of not less than \$125.00 nor more than \$500.00 and that to compel these defendants, at their peril, to decide, as a matter of law, which was the correct rate and to punish them by the infliction of said penalties for a mistake of law as to which was applicable, is to deprive them of their property without due process of law and deprive them of the equal protection of the law contrary to the 14th amendment to the Constitution of the United States.

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XXIV.

The court erred in failing and refusing to direct a verdict in favor of the defendants because the evidence shows, without dispute, that when said lumber mentioned in plaintiff's petition, started on its journey from Ruliff, Tex., same was destined to a foreign country and constituted foreign commerce, and not intra-state commerce; that it was in fact shipped from Ruliff, Tex., a point in the United States through Sabine, Texas, a port of trans-shipment, on the Gulf of Mexico, to a foreign country, and was not subject to or controlled or affected by the rules, rates or regulations of the Railway Commission of the State of Texas, and is, therefore, violative of Sec. 8, Art. 1, of the Constitution of the United States, and Act commonly known as the Interstate Commerce Act, approved February 4th, 1887, and acts amendatory thereof.

Defendants—

TEXAS & NEW ORLEANS RAILROAD
COMPANY,

By BAKER, BOTTS, PARKER & GARWOOD,
PARKER & HEFNER, & WILL E.
ORGAIN.

TEXARKANA & FT. SMITH RAILWAY
COMPANY,

By HIRAM GLASS.

Endorsed: "#6071. Sabine Tram Co. vs. T. & N. O. R. R. Co., et al. Defendant's motion for a new trial. Filed January 25th, 1908. B. Boykin, C. D. C., Jefferson Co. Tex., by Joe Cottam, Deputy."

Order Overruling Motion for New Trial.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

vs.

TEXAS & NEW ORLEANS RAILROAD COMPANY et al.

On this the 25th day of January 1908, came on to be heard the Motion of defendants Texas & New Orleans Railroad Company and the Texarkana & Forth Smith Railway Company, praying for that the verdict of the jury and the judgment of the court rendered on to-wit, January 24th, 1908, be set aside and that said defendants, and each of them, be granted a new trial herein, and same being duly presented and considered by the court, it is hereby overruled and new trial herein refused, to which action and ruling of the court and the said defendants, and each of them, here and now in open court duly except and give notice of appeal to the Honorable Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, Texas, and upon application of said defendants and each of them, thirty days after judgment of the present term of this court is hereby allowed within which Statement of Facts and Bills of Exception may be prepared and be filed.

It is further ordered by the court upon application of all parties plaintiff and defendants that all way bills, bills of lading, expense bills, vouchers and schedules of rates and other original papers filed in evidence as exhibits by the parties hereto be sent by the Clerk of this Court to the said Court of Appeals as a part of the record in this cause.

L. B. HIGHTOWER, JR.,
Judge Presiding.

Supersedeas Bond.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA & FORT SMITH RAILWAY COMPANY.

Whereas, in the above styled and numbered cause pending in the District Court of Jefferson County, Texas, sixtieth judicial district, at the regular term of said court on the 24th day of 182 January, 1908, the said Sabine Tram Company recovered judgment against the said defendants, Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company, jointly and severally in the sum of to-wit, Three thousand five hundred seventy three (\$3573.00) dollars with interest thereon from date of judgment at the rate of 6% per annum and all costs of suit, and

Whereas, on to wit, the 25th day of January, A. D. 1908, a motion theretofore filed by the said defendants Texas & New Orleans Railroad Company, and Texarkana & Fort Smith Railway Company, praying for a new trial was overruled, to which action of the court the said Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company each then and there excepted and gave notice of appeal to the court of Civil Appeals for the First Supreme Judicial District at Galveston, from which judgment said defendants, and each of them, have taken an appeal to the court of Civil Appeals,

Now, therefore, we, the Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company as principals and the United States Fidelity & Guaranty Company as sureties acknowledge ourselves bound to pay to the said plaintiff the Sabine Tram Company the sum of Seven Thousand five hundred (\$7,500.00) dollars, conditioned that the said Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company, appellants, shall prosecute their appeal with effect and in case the judgment of the Supreme Court or the Court of Civil Appeals should be against them, or either of them, that they shall perform its judgment sentence or decree and pay all such damages as said court may award against them.

Witness our hands, this 14th day of Feb. A. D. 1908.

TEXAS & NEW ORLEANS RAILROAD COMPANY,

By PARKER & HEFNER,

Its Att'ys of Record.

TEXARKANA & FORT SMITH RAILWAY COMPANY,

By HIRAM GLASS, *Its Att'ys of Record.*

UNITED STATES FIDELITY & GUARANTY CO.,

J. S. EDWARDS, Agent, (*Surety.*)

Endorsed: No. 6071. Sabine Tram Co. va T. & N. O. R. R. Co., et al. Defendant's Supersedeas Bond on Appeal. Approved and filed Feb. 14, 1908. B. Boykin, Clerk D. C. Jeff. Co. Tex. By D. Gray, D'p'ty."

Assignment of Errors.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS RAILROAD COMPANY, and TEXARKANA & FT. SMITH RAILWAY COMPANY.

Come now the Texas & New Orleans Railroad Company and the Texarkana & Fort Smith Railway Company, defendants herein, and file the following assignments of error:

I.

The Court erred in overruling and failing to sustain the plea in abatement filed by the Texas & New Orleans Railroad Company, filed herein, wherein and whereby it is set up and alleged that under and by virtue of the provisions of Art. 4568 of Chap. 13, Title 94 of the Revised Statutes of Texas, the exclusive jurisdiction is given to the Railway Commission of Texas to hear and determine, in the first instance, complaint of this nature, and to award damages due for such violation, in case, it, the Railway Commission, finds there has been such violation.

II.

The court erred in overruling and failing to sustain special exception contained in paragraph 3 of the amended original answer of the defendant, the Texas & New Orleans Railroad Company, to the effect that it appears from plaintiff's petition that plaintiff seeks to recover in this suit damages for alleged violation by defendants of the laws of the state, and the regulations of the Railway Commission, in that it is alleged that defendant charged another and different rate for the shipments involved in the controversy set up in this suit from the rate previously fixed by the Railway Commission of the State of Texas, and alleged by plaintiff to be applicable thereto, which damages, if the facts be as plaintiff alleges, are such as can be awarded upon a hearing before the Railway Commission of Texas; and the said Railway Commission of Texas, under the law, has sole and exclusive authority to grant relief sought by plaintiff herein as regards such damages, and this court has no jurisdiction to hear and determine such cause of action, as appears from the allegations in plaintiff's petition.

III.

The court erred in overruling and failing to sustain special exception contained in paragraph 4 of the Amended Original Answer of the defendant, the Texas & New Orleans Railroad Company, and the special exception of the defendant, Texarkana & Ft. Smith Railway Company, to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railway Commission of Texas does not permit the cumulation of penalties thereunder, and that under the allegations in the plaintiff's petition it was entitled to recover only one penalty of not less than one hundred and twenty five dollars (\$125.00) nor more than five hundred dollars (\$500.00) that it could only recover one penalty for all alleged overcharges, up of the time of filing its suit.

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IV.

The court erred in overruling and failing to sustain special exception of the defendant, Texas & New Orleans Railroad Company, as contained in paragraph 5 of the Amended original answer of said Company, to the effect that if Art. 4575 of the Revised Statutes of the State of Texas, being Section 17 of the Act of April 3rd, 1891, creating a Railway Commission, and under the provisions of which this action is brought, permits the cumulation of penalties for alleged successive acts of overcharge, committed prior to the institution of the suit, that then, and in that event, the same is invalid and void as in contravention of Sec. 13, Art. 1, of the Constitution of the State of Texas, which provides that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him in his lands, goods, persons or reputation, shall have remedy by due course of law." And in contravention of the 14th amendment to the Constitution of the United States, which provides: "Nor shall any state deprive any person of life, liberty or property without due process, of law, nor deny to any person within its jurisdiction the equal protection of the law."

V.

The court erred in sustaining special exception No. 7, contained in plaintiff's first supplemental petition, filed herein January 20th, 1908, to paragraph 13 of the first amended original answer of defendant, the Texas & New Orleans Railroad Company, as follows:

"7. Plaintiff further specially excepts to the 18th paragraph of said answer, and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows it is an effort to inquire into the reasonableness of certain rates fixed by the Railway Commission of Texas in an action between the Sabine Tram Company, plaintiff herein, a private party, and the railway companies affected by said rates, in violation of Art. 4564 of the Revised Statutes of the State of Texas, same being Sec. 5 of the act passed by the 22nd Legislature of the State

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of Texas entitled "An Act to establish a Railway Commission for the State of Texas" etc. and appearing on page 58 of the Acts of 1891."

for the reason that in an action to recover penalties for an alleged violation of the rates orders, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the 14th amendment to the Constitution of the United States.

VI.

The court erred in failing to direct a verdict in favor of the defendants herein, and in failing and refusing to give Special Charge No. 1, requested by defendants, directing the jury to return a verdict in favor of the defendants and each of them.

VII.

The court erred in assuming and finding as a matter of law that the commerce affected by the shipments in controversy herein was intra-state commerce and not foreign commerce, such matter being an issuable fact under the evidence herein to be determined by the jury.

VIII.

The court erred in finding, as a matter of law, that the Railway Commission of Texas, rate applicable to the shipments involved herein was six and one half cents per hundred pounds, and not twelve and one half cents per hundred pounds, from Ruliff, Texas, the point of origin, to Sabine, Texas, on the Texas & New Orleans Railroad, the uncontradicted evidence showing herein that the lawful rate under the rules and regulations of the Railway Commission of Texas, if said shipments were domestic or intra-state commerce, was at the time of said shipments, twelve and one half cents per hundred pounds, and not six and one half cents per hundred pounds.

IX.

The court erred in assuming and finding as a matter of law that the lawful commission rate in effect at the times involved herein, and applicable to the shipments involved in this controversy, was six and one half cents per hundred pounds, from Ruliff, Texas, the point of origin, on the line of the Texarkana & Ft. Smith Railway Company, defendant, to Sabine, Texas, a station on the line of railway of the Texas & New Orleans Railroad Company, defendant, and not twelve and one half cents per hundred pounds, the question as to what was the lawful rate in force under and by virtue of the orders of the railway Commission of Texas being an issue of fact to be determined under the evidence in this case, by the Jury.

X.

The court erred in holding that plaintiff, if entitled to recover actual damages as for an overcharge, was entitled to recover penalties in the sum of not less than six hundred and twenty five dollars (\$625.00) and not more than twenty five hundred dollars (\$2500.00) and in so charging the jury, for the reason that the uncontradicted testimony herein, and the law under which plaintiff seeks to recover, does not permit the recovery of more than one penalty of not less than one hundred and twenty five dollars (\$125.00) nor more than \$500.00 in any event.

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XI.

The court erred in failing and refusing to give special charge No. 2, asked by the defendants, to the effect that plaintiff in no event can recover more than one penalty of not less than \$125.00 nor more than \$500.00 in this cause.

XII.

The court erred in failing and refusing to give special charge No. 3, asked by defendant, Texarkana & Ft. Smith Railway Company, to the effect that plaintiff cannot recover any penalty against the Texarkana & Ft. Smith Railway Company, and directing the jury to find a verdict in favor of that company on said issue.

XIII.

The court erred in failing and refusing to give Special Charge No. 4, requested by the defendant, the Texas & New Orleans Railroad Company, to the effect that there are no facts in evidence which will justify the jury in rendering a verdict for penalties in any amount against the Texas & New Orleans Railroad Company and instructing them to find a verdict in its favor upon that issue.

XIV.

The court erred in holding as a matter of law that the action of defendant in applying the Interstate Commerce Commission rates, regularly established, filed and published by defendants, to the shipments in controversy herein, instead of the rates proscribed by the Railway Commission of Texas, if a mistake, was a mistake of law, and not of fact, and in refusing to submit to the jury the issue as to whether the defendants herein, in applying the rates in controversy, were acting under an honest belief that the rates applied to the shipments in controversy were the lawful rates; and in failing and refusing to give special charge No. 5, requested by defendants, to the effect that if the defendants, their servants and agents, believed in good faith that the shipments in controversy herein were foreign commerce, and so believing applied said rates in good faith, that the same constituted a mistake of fact which would excuse defendants from the infliction of the penalties sued for.

XV.

The court erred in failing and refusing to give special charge No. 6, asked by the defendants, to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company, situate adjacent to the station of Sabine, Texas, on a road of the latter company, when intended for export to foreign countries, other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the Interstate tariffs so filed. And that, if they believed from the evidence that the defendant, the Texas & New Orleans Railroad Company, and its agent, acting in that behalf, believed in good faith, and acting upon reasonable grounds, for that belief, that the shipments in controversy were foreign shipments and intended for export to foreign countries other than Mexico, then in that event, they should find for the defendants upon the issue of penalties theretofore submitted by the court.

XVI.

The court erred in failing and refusing to give defendant's special charge No. 7, to the effect that defendants having prior to the shipments in controversy, duly and legally established, filed with the Interstate Commerce Commission and published tariffs of rates covering shipments of lumber from Ruliff, Texas, to Sabine, Texas, over their respective lines, in carload lots, for export to foreign countries, other than Mexico, and that the freight charges
190 herein collected were charged and collected under and in pursuance of such tariffs, and that the shipments involved, actually moved in carload lots, in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment, and were thence actually exported to Europe, that as a matter of law, it was the duty of defendants to charge and collect no other freight charges than those prescribed in the tariffs, aforesaid, and if they had *have* charged any other rate than that prescribed, they would have been subjected to penalties prescribed in the Act to Regulate Interstate and Foreign Commerce and the Acts amendatory thereof. And that, regardless of whether the lumber transported constituted foreign or interstate commerce or intra-state or domestic commerce, it was the defendants' duty to apply the tariffs so established and no other *other* tariff, and that, therefore, they should find a verdict for the defendants, both upon the issue of actual overcharge demanded, and the penalties sued for.

XVII.

The verdict herein is grossly excessive in amount in that the jury found as penalties for said alleged overcharges, the sum of \$1785.00, when, under the charge of the court, the maximum amount permitted to be recovered is \$2500.00 and the minimum amount

\$625.00, the uncontradicted, testimony herein showing that if the charges demanded and received were in excess of those permitted to be charged under the regulations of the Railway Commission of Texas, that said overcharge was made upon reasonable grounds for a belief that the charge made and collected was the only legal rate applicable to such shipments, and the servants and agents of defendants, upon reasonable grounds, believed that they had the right and that it was their duty to collect the rate so charged and received.

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XIX.

The court erred in rendering and entering judgment for any amount against the defendants herein, for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce, moving from a point within the United States, through a port of trans-shipment to foreign countries, and that these defendants herein prior to said shipments had legally established, filed with the Inter-state Commerce Commission, and published schedules and tariffs of rates applicable to such shipments and that the rates charged and collected by defendants were the rates so established in said tariffs and schedules, filed and published, and were the legal rates applicable thereto.

XX.

The verdict of the jury and the judgment of the court is erroneous because the Constitution of the United States and especially Art. 1, Sec. 8 thereof and the Act of Congress commonly known as the Inter-state Commerce Act, approved February 4th, 1887, and acts amendatory thereto, authorize and permit the defendants to charge and collect the rates named in the tariffs promulgated and filed with the Inter-state Commerce Commission, and said verdict and judgment is a denial of that right so claimed by defendants, under said Constitution and laws of the United States.

XXI.

The court erred in permitting a recovery for penalties under the facts in this case, for the reason that under the constitution and laws of this State, no penal act which is so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed or from some other written law of the State can be enforced.

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XXII.

The court erred in holding and charging the jury, as a matter of law, that the plaintiff was entitled to recover five (5) penalties, amounting in the aggregate to not less than six hundred and twenty five dollars (\$625.00) nor more than \$2500.00

XXIII.

The court erred in permitting the recovery of penalties in any amount herein, and the verdict and judgment rendered herein is erroneous in finding for plaintiff upon the issue of penalties herein, in this: that the uncontradicted testimony shows that the shipments by plaintiff declared upon, moved in a continuous and unbroken journey from Ruliff, Texas, to the point of origin, through Sabine, a port of trans-shipment, to a foreign port; that prior to said shipments, defendants had promulgated and filed with the Inter-state Commerce Commission tariffs of rates applicable to such movements, and that defendants actually applied and such rates to such movements, that defendants, under and Act to Regulate Commerce, approved February 4th, 1887, and acts amendatory thereof, and the Act of Congress approved February 19th, 1903, commonly known as the Elkins Act, and acts amendatory thereof, was compelled under the threat of severe penalties, to apply said tariff and no other tariffs; and that, under the Railway Commission Act of Texas, the charging and receiving of freight charges, in excess of the rates prescribed by said Commission, is punishable by a penalty of not less than One Hundred and twenty five dollars (\$125.00) nor more than \$500.00, and that to compel these defendants, at their peril, to decide, as a matter of law, which was the correct rate, and to punish them by the infliction of said penalties for a mistake of law, as to which was applicable, is to deprive them of their property without due process of law, and deprive them of the equal protection of the law, contrary to the 14th amendment of the Constitution of the United States.

XXIV.

The court erred in failing and refusing to direct a verdict in favor of the defendants because the evidence shows, without dispute, that when said lumber, mentioned in plaintiff's petition, started on its journey from Ruliff, Texas, same was destined to a foreign country, and constituted foreign commerce and not intra-state commerce, that it was in fact shipped from Ruliff, Texas, a point in the United States, through Sabine, Texas, a port of trans-shipment, on the Gulf of Mexico, to a foreign country, and was not subject to or controlled or affected by the rules, rates or regulations of the Railway Commission of the State of Texas, and the enforcement of said rules, rates and regulations of the Railway Commission of Texas, in respect to said shipments is, therefore, violative of Sec. 8, Art. 1, of the Constitution of the United States, and the act commonly known as the Interstate Commerce Act, approved February 4th, 1887, and acts amendatory thereof.

XXV.

The court erred in instructing the jury to find in favor of plaintiff for any sum, as penalties, and in entering judgment for the sum of \$1785.00, as penalties. Article 4575 of the Revised Statutes

of Texas, under which said penalties were allowed and adjudged is unconstitutional and void, and is violative and in contravention of Sec. 13, Art. 1 of the Constitution of Texas, which provides that no excessive fines shall be imposed nor cruel or unusual punishment inflicted; and is also in contravention of the 14th amendment to the Constitution of the United States, which provides that no person shall be deprived of life, liberty, or property without due process of law, nor denied the equal protection of the law, within 194 the jurisdiction of the state; that the infliction of penalties, not less than \$125.00 nor more than \$500.00 for each overcharge is an excessive fine, and is depriving the defendants of the equal protection of the laws, and taking their property without due process of law.

BAKER, BOTTA, PARKER & GARWOOD,
PARKER & HEFNER,

Att'ys for T. & N. O. R. R. Co.

ROBERTSON & WHITAKER,
GLASS, ESTES & KING,

Att'ys for T. & F. S. Ry. Co.

Endorsed: "No. 6071. Sabine Tram Company vs. T. & N. O. R. R. Co. et al. Assignments of Error. Filed April 9th, 1908. B. Boykin, Dist. Clerk."

Pf's Cross Assignment of Errors.

In the District Court of Jefferson County, Texas, 60th Judicial District.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS R. R. COMPANY et al.

And now comes the Sabine Tram Company, plaintiff in the above styled and numbered cause and files the following cross-assignments of error:

1.

The court erred in refusing to give special charge No. 1, requested by plaintiff, which was as follows:

"GENTLEMEN OF THE JURY: You are instructed that the plaintiff is entitled to recover, in addition to the overcharges, as defined in other portions of the charge, of the court, a penalty of not less than \$125.00 nor more than \$500.00 on account of each bill of lading on which you may believe from the evidence that the defendant collected overcharges, that is, over 6½ cents per hundred 195 pounds as on the shipments in question, and you should return a verdict for said overcharges and also penalties in such amount as you may believe from the evidence should be assessed, within said limitations above set out."

2.

The court erred in refusing to give special charge No. 2, requested by plaintiff, which was as follows:

"GENTLEMEN OF THE JURY: You are instructed that the plaintiff is entitled to recover of the defendants a penalty of not less than \$125.00 nor more than \$600.00 on each shipment on which the defendants collected an overcharge.

But you are instructed that in this connection the term "shipment" is to be construed by you subject to the following instructions:

If several cars were tendered by the plaintiff to the defendant Texarkana & Fort Smith Railway Company together, and so received for transportation, a receipt for such cars together would constitute but one act, and you must consider the lumber so received in several cars together (if you believe from the evidence that any were so received) as constituting one shipment, even though there might have been several bills of lading issued therefor; on account of which plaintiff would be entitled to recover only one penalty for said cars so received together."

3.

The court erred in limiting by its charge the liability of the defendants on account of penalties to a sum of money "not more than \$2500.00 nor less than \$625.00" because the undisputed evidence showed at least twenty six separate shipments under as many separate bills of lading on which the defendants collected overcharges in violation of the statutes.

GREER, MINOR & MILLER,

Attorneys for the Appellees, Sabine Tram Company.

196 Endorsed: "No. 6071. Sabine Tram Company vs. Texas & New Orleans Railroad Company, et al. Cross assignments of error by Sabine Tram Company. Filed April 11, 1908. B. Boykin, Clerk D. C. Jeff. Co., Tex., By D. L. Gray, D'p'ty."

Cost Bill.

No. 6071.

SABINE TRAM COMPANY

VS.

T. & N. O. R. R. Co. et al.

Clerk's Costs Incurred by Plaintiff.

To Flg. doc. and ent. ....	.50
" Issg. cit. and 2 cop.	1.75
" Flg. response to plea ....	.15
" Ord. on Jury ....	.75
" Flg. D. Intgs. ....	.15
" Issg. comm. Flanagan ....	.75
" Cert. cop. D. & X Intgs.	7.95
" Flg. eptn. ....	.15
" Flg. and petition ....	.15
" Issg. subp. & 5 wit.	1.00
" Issg. subp. 3 wit. ....	.70
" Issg. ½ cont. ....	.10
" Flg. notice ....	.15
" Flg. suppl. reply to T. & N. O. ....	.15
" Flg. suppl. reply to T. & F. S. ....	.15
" Issg. subp. ....	.25
" Issg. subp. ....	.25
" Issg. subp. duces tecum ....	.75
" Swg. & emp. jury & rec. verd. ....	.70
" Swg. 8 wits. ....	.80
" Flg. 2 spec. charges ....	.30
" Flg. court charge ....	.15
" Ord. on demurrers	1.50
" Judg. final.	1.50
" Tax cost ....	.25
" Flg. X assign. errors ....	.15
	<hr/>
	\$21.15

Sheriff's Costs Incurred by Plaintiff.

To serv. 2 czits. & mi.	2.00
" Serv. 2 wits. & mi.	3.00
" Serv. 4 wits.	2.50
" Serv. 1 wit. and mi. ....	.75
" Serv. 1 wit. and mi. ....	.75
" Serv. subp. du. tecum. ....	.60
	<hr/>
	9.60
Stenog. fee	3.00
Notary fee J. D. Campbell	15.00
	<hr/>
	\$18.00
Carried for'd	\$48.75

198 Brought For'd \$48.75

Clerk's costs incurred by Defendants.

To Filg. orig. ans. T. & F. S. R. Co.	\$.30	
" Filg. ans. T. & N. O. ....	.30	
" Filg. 2 sets X intgs. ....	.30	
" Issg. subp. ....	.25	
" 1/2 cont. ....	.10	
" Filg. 2 1st amend. ans. ....	.30	
" Swg. 2 wit. ....	.20	
" Filg. 7 spec. charges.	1.05	
" Filg. Mo. new trial. ....	.30	
" Ord. on Mo. N. Trial. ....	.75	
" Filg. supersedeas bond. ....	.15	
" Aprvg. supersedeas bond.	1.50	
" Filg. stat. facts. ....	.15	
" Filg. assign. of errors. ....	.15	
" Tax cost. ....	.25	
" Mkg. transcript.	73.10	
		79.15

Sheriff's Costs Incurred by Defendants.

To serv. Cit. and mi.	\$ 2.50	
		2.50
Total.		\$130.40

199 Clerk's Certificate.

THE STATE OF TEXAS,
County of Jefferson:

I, B. Boykin, District Clerk in and for Jefferson County, Texas, do hereby certify that the above and foregoing is a true and correct copy of all proceedings had in cause No. 6071, wherein Sabine Tram Company was plaintiff, and the T. & N. O. R. R. Co., et al., were defendants, now on file and of record in said court, except the statement of facts.

Given under my hand and the seal of said court, at office in Beaumont, this May 8 1908.

[SEAL.]

B. BOYKIN,
District Clerk, Jefferson County, Texas.
By D. GRAY, Deputy.

Endorsements on district clerk's transcript: Texas & New Orleans Ry. Co. et al., Appellants, vs. Sabine Tram Co., Appellee. From the District Court of Jefferson County. Applied for by Parker & Hefner & H. Glass Attorneys for Appellants on the 14 day of Feby. 1908, and delivered to Parker & Hefner, Attys., on the 8 day of May 1908. B. Boykin, Clerk District Court Jefferson County. Parker & Hefner, Robertson & Whitaker & H. Glass At-

torneys for Appellants. Beaumont, Texas. Greer, Minor & Miller, Attorneys for Appellee, Beaumont, Texas.

No. 4920. Filed in Court Civil Appeals May 12, 1908. H. M. Knight, Clerk.

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No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS RAILROAD COMPANY AND TEXARKANA & FORT SMITH RAILWAY COMPANY.

The within Statement of Facts prepared by my official Stenographer, having been first submitted to and approved by counsel for Plaintiff and both defendants, same is now hereby approved by me and ordered filed as the Statement of Facts in this case and is made a part of the record in this case. Done this the 24th day of February, A. D. 1908.

L. B. HIGHTOWER, Jr.,

Judge of the District Court in and for Jefferson County, Texas, Sixtieth (60) Judicial District.

Filed Feb. 24, 1908. B. Boykin, -Clerk D. C. Jeff. Co. Tex. By D. Gray, Dpty.

201 In the District Court of Jefferson County, Texas, 60th Judicial District, Jury Term, Jan. —, 1908.

No. 6071.

SABINE TRAM COMPANY

VS.

TEXAS & NEW ORLEANS RAILROAD CO.

Statement of Facts.

Be it remembered that upon a trial of this cause had before a jury in this court begun on to wit; January 20th, 1908, the Honor. Geo. C. Greer, of the firm of Greer, Minor & Miller, being attorney for the plaintiff, and the Honorable Hiram Glass being attorney for the defendant, Texarkana & Ft. Smith Railway Company, and the Honorable H. M. Garwood, of the firm of Baker, Botts & Garwood together with Oswald Parker, of the firm of Parker & Hefner, representing the defendant, Texas & New Orleans Railroad Company, the following testimony was adduced.

Plaintiff's Testimony.

C. E. WALDEN, being sworn testified.

Direct examination:

In 1906 I was connected with the Sabine Tram Company in the capacity of Assistant Secretary and General Manager; during that year I made a contract with W. A. Powell Company for sale of certain lumber to the W. A. Powell Company, which contract was subsequently reduced to writing, that contract having been made by correspondence and consisting of letters as follows, which letters I identify as the original.

"Official Order No. 748."

NEW ORLEANS, Aug. 28, 1906.

Messrs. Sabine Tram Co., Beaumont, Texas:

Quantity	Please enter our order for the following wood goods;
Dimension	500,00 ft. Long Leaf Yellow Pine Sawn Timber.
Price	30 cubic average.
	\$21.00 delivered in the water at Orange or \$21.50
	f. o. b. cars Sabine, your option.

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Delivery September-October 1906.

Payment Usual Terms.

W. A. POWELL CO., LIMITED,
Per I. C. JENSSEN.

PLAINTIFF: We offer in evidence letter dated August 27th 1906 from Sabine Tram Company to W. A. Powell Company, Limited, as follows, to wit:

"BEAUMONT, TEXAS, 8/27/06.

W. A. Powell Co., Ltd., New Orleans, La.

GENTLEMEN: We confirm having sold your Mr. W. A. Powell 500 M Ft. of thirty cubic average timbers at \$21.00 in the water at Orange or \$21.50 f. o. b. cars Sabine, our option, September and October delivery. We have entered same under our #6793 for our best attention.

Thanking you for the order and awaiting your further commands, we are,

Yours very truly,

SABINE TRAM COMPANY,
By C. E. WALDEN."

CEW-M

WITNESS: That was our confirmation of the sale under his formal order.

PLAINTIFF: We offer in evidence a letter dated August 28th 1906 from W. A. Powell Company Ltd., to Sabine Tram Company, accompanying the order, and this last letter, though offered of date August 28th, was marked Plaintiff's exhibit No. 3, same being as follows:

"W. A. Powell Company, Limited."
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Aug. 28, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

203 **DEAR SIRS:** Enclosed please find our official order for 500,000 ft. of 30 avg. timber bought by our Mr. Powell on his yesterday's visit. Besides, it is understood that you agree to furnish us with all the 30 avg. you can give us for prompt shipment, over and above the order. Kindly enter accordingly and oblige,

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN."

Dic. H. J.
Enclosure.

WITNESS: The lumber was furnished and supplied under this order, it was shipped by rail from Ruliff Texas to Sabine, passing over the Texarkana & Ft. Smith Railway from Ruliff to Beaumont, and thence over the T. & N. O. from Beaumont to Sabine. Ruliff is in the State of Texas, Sabine is also in the State of Texas. The line of railroad just mentioned is in the State of Texas. The Texarkana & Ft. Smith Railway was running a line of railroad in 1906, operating as a common carrier, as was also the Texas & New Orleans Railroad Company. The Sabine Tram Company had a mill located at or near Ruliff, just a mile and a half from Ruliff. Connected with the main line by rail at Ruliff. During 1906 the Sabine Tram Company was a corporation running a saw mill, engaged in the general manufacture of all kinds of lumber. The track of the Texas & New Orleans Railroad Company connected with the track of the Texarkana & Ft. Smith Railway Company at Beaumont, and during the year 1906 interchanged freight at Beaumont, taking cars from the track of one to the track of the other they being connecting carriers at Beaumont, Tex. Cars on which this lumber was loaded moved from Ruliff to Sabine without change to Sabine, that is, without changing the lumber from the cars. I don't recollect that a single car was transferred.

The Sabine Tram Company paid the freight on the cars to Sabine through Chris Flannigan. Chris Flannigan was employed at
204 the time by W. A. Powell Company, Ltd., of New Orleans.

We shipped this lumber from the Sabine Tram Company to the Sabine Tram Company at Sabine; in other words we shipped it to ourselves and we made a regular invoice, and we made sight draft on W. A. Powell Company, Ltd., at New Orleans for the full or gross value of the lumber, which was filed with the bank for collection,

and in due process collected by the bank from W. A. Powell Company, Ltd., and when the cars reached Sabine we had arranged with Chris Flannigan to ascertain the amount of freight and pay it and render the expense bills and we would send a check. Chris Flannigan sent the expense bills to W. A. Powell Company, Ltd., at New Orleans, and the Powell Company sent us the expense bills with the statement of money so paid out, and we then sent a check to cover. In the first instance we were paid the full purchase price of the lumber delivered at Sabine without deducting the freight; after the freight was paid they rendered statement and we repaid the amount of freight according to those statements. The Sabine Tram Company had no duty connected with these shipments or any concern with the lumber after delivery at Sabine and the payment. I knew the destination to be Sabine, but did not know anything beyond that, and had no concern or connection with this lumber beyond delivery at Sabine. Our delivery called for Sabine, we got the money for it delivered there and that was as far as we were interested. They couldn't get the lumber without paying the drafts with bills of lading attached as I understood it, that is where the sight drafts were attached to the bills of lading, this is my understanding, that they couldn't have got that lumber without paying the draft. With some of the shipments to save time we sent the bills of lading over to Mr. Flannigan so that he could get the lumber without waiting for the bills of lading so long, that is, without waiting for us to deposit the bill of lading with the draft in the bank here in Beaumont, and from this bank here have to sent to New Orleans to Powell Company, Ltd., and then back to Mr. Flannigan; to avoid this delay some of the bills of lading were delivered to him, 205 but the drafts were made regularly, and we knew that we had our money in the bank before the material was unloaded; this was a mere matter of convenience and to prevent delay.

At the time these shipments were made the Sabine Tram Company didn't know what was to be done with them further than that we delivered at Sabine. When we received the first expense bills from W. A. Powell Company, Ltd., they showed that the Railroad company had collected six cents which we protested against. When we received the first expense bills from W. A. Powell Company, Ltd., showed that the Railroad companies had collected six cents per hundred pounds from Ruliff to Sabine, and I directed Chris Flannigan to make protest on behalf of my Company, as they had charged us an excess of what we thought a proper rate. We thought that the rate should be four cents. The bills as presented were paid under protest.

PLAINTIFF: We offer in evidence a letter dated August 31st 1906 from the Sabine Tram Company to W. A. Powell Company, Ltd., which is as follows:

"BEAUMONT, TEX., August 31st, 1906.

W. A. Powell Company, New Orleans, La.

DEAR SIRS: Referring to your order 748 and your letter of the 18th, beg to advise that we have instructed our shipping department

to begin work on this order at once and to make delivery as fast as possible to you at Sabine. These instructions are given due to the fact that it will take us some two or three weeks to get ready to make delivery at Orange and we think it best to commence delivery at Sabine and change to Orange as soon as we are in position to do so.

In this connection, beg to advise that the railroad company will probably try to collect freights in excess of 4c as they are trying to increase their ~~export~~ rate. We wrote you in reference to this on the 29th. We would thank you to refuse to pay anything in excess of 4c until it is absolutely demonstrated that they are going to enforce that rate, and we would thank you to make each payment under protest recording in your check "Rate paid under protest." In this way we would protect our interest and preserve all our rights. (The Railroad Commission has ruled that 4c is the correct rate and they have a test case in the courts now.)

Please advise if you will do this.

Awaiting your further commands, we are

Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN."

To the introduction of this letter in evidence the Defendants objected on the ground that the witness had already testified that he authorized W. A. Powell Company, Ltd., to pay the freight for the Sabine Tram Company, to be repaid, and to pay them under the protest, and that if the purpose of the letter, as stated by Plaintiff's counsel was to show that the Sabine Tram Company had authorized Powell Company to pay the freight under protest, that has already been stated by the witness.

Defendants offered the further objection to this letter because, on its face it shows that it is laying the basis for this very sort of suit, contains self serving declarations. The conclusion of the witness or others, as to what rate was applicable is not only a question of fact but a question of law, and a matter which could not be testified to directly, and could not be properly admitted in correspondence.

The Court thereupon ruled that he would exclude those parts of said letter included in parenthesis, but would admit the rest of the letter, and as to such parts so admitted overruled the objections of the defendants. To which action of the court in admitting any part of the letter the defendants excepted; and to the action of the court in excluding the parts contained in parenthesis the plaintiff excepted.

Plaintiff next offered in evidence a letter dated September 1st 1906 to W. A. Powell Company, Ltd., from the Sabine Tram Company, which is admitted without objection, same being as follows;

"BEAUMONT, TEXAS, September 1st, 1906.

W. A. Powell Company, Limited, New Orleans, Louisiana.

GENTLEMEN: We are to-day making sight draft on you, through

the First National Bank of Beaumont, for \$2313.27, in settlement of seven cars, as per statement herewith enclosed.

Please protect draft when presented and oblige,

Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN."

C. E. W.: D.
Enclosure.

WITNESS: Those seven cars mentioned in the letter just read were seven cars we shipped from Ruliff to Sabine on the order of W. A. Powell Company, Limited, these were some of the cars in question, and that is the gross value of those cars.

Plaintiff next offers in evidence a letter dated October of 30th 1906 from W. A. Powell Company, Limited to the Sabine Tram Company, being as follows:

"Oct. 30, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: Enclosed please find memo. of freights paid for your account on cars received by us amounting to \$594.16, for which kindly send us your check in settlement. We also enclose you herewith paid freight bills.

Yours truly,

W. A. POWELL CO., LTD.,
I. C. JANSSEN.

Enclosures.

Plaintiff next offered in evidence, without objection, letter dated November 3, 1906 from W. A. Powell Company, Ltd., to
306 Sabine Tram Company, being as follows;

"W. A. Powell Co., Ltd.
Lumber Exporters,
804-805 Hibernia Bank Building.

NEW ORLEANS, LA., Nov. 3, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: Enclosed find freight bills to the amount of \$125.16, paid for your account, for which please reimburse us at your earliest convenience.

Yours truly,

W. A. POWELL COMPANY, LTD.,
I. C. JANSSEN."

Dis. H. J.
Enclosure.

Plaintiff next offered in evidence without objection, letter from Sabine Tram Company to W. A. Powell Company, Ltd. dated November 7th 1906, being as follows:

"SABINE TRAM COMPANY,"

"BEAUMONT, TEX., November 7th, 1906.

W. A. Powell Company, Limited, New Orleans, Louisiana.

GENTLEMEN: We beg herewith to enclose New Orleans exchange for \$594.16, covering freight on the following cars;

21896	21831	57361	21139	24398
26528	21376	21694	24439	21118
24966	26537	26072	26755	24036

Also New Orleans exchange for \$125.16, covering the following cars

21629	21139	25187	21037
-------	-------	-------	-------

Kindly acknowledge receipt and oblige

Yours truly,

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SABINE TRAM COMPANY,
By C. E. WALDEN."

A. J. K.: D.
Enclosure.

WITNESS: Referring to the letter just introduced the number of cars that covered is given here. I will state that this money, \$594.10 and \$125.16 was sent by my instructions. I am sure that it covered the rate figured on the basis of six cents as they had just begun collecting fifteen cents. They subsequently changed the rate. These two amounts, \$594.10 and \$125.16 were the amounts referred to in the two letters next preceding that we have just introduced from W. A. Powell Company, Ltd.

Plaintiff next offered in evidence a letter dated November 6th 1906 from W. A. Powell Company, Ltd., to the Sabine Tram Company, together with another letter or statement of same date accompanying the first letter, both being as follows:

W. A. Powell & Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 6, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: We beg to hand you statement of freight paid for your account at Sabine, to the amount of \$2547.64, for which kindly send us check by return.

We also would kindly request you to remit us for the freight paid as per our letters of Oct. 30 and Nov. 3rd. As you are always drawing in full against your invoices, this is practically an outlay of money for your account, and we therefore kindly request you to

remit us for these statements immediately upon receipt, also we would not allow you to draw for full invoice amount in future.

Yours truly,

W. A. POWELL COMPANY, Ltd.,
I. C. JANSSEN.

Dis. H. J.
Enclosure.

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W. A. Powell Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 6th, 1906.

Messrs. Sabine Tram Co., Beaumont, Tex.:

We debit your account as follows:

Initials.	Car No.	Date W. B.	Amt. freight.
K. C. S.	21139	9/7	\$38.61
"	21639	9/8	60.24
T. F. S.	21037	9/10	36.00
K. C. S.	24751	9/11	55.80
"	24751	9/11	28.70
"	25187	9/12	52.92
S. P.	59100	9/15	38.76
T. C.	3011	9/15	25.50
"	3p11	9/15	36.00
S. P.	59100	9/15	55.89
"	55507	10/2	73.72
"	55507	10/2	1.00
K. C. S.	25197	10/3	129.60
S. A.	1140	10/3	61.50
K. C. S.	21494	10/5	95.48
"	26008	10/5	119.00
T. & N. O.	3174	10/5	85.50
K. C. S.	25417	10/6	96.10
"	25288	10/9	97.30
M.	21117	10/11	140.22
S. A.	40259	10/11	120.40
F. & W. S.	5667	10/15	111.60
S. P.	78809	10/16	126.70
S. H. T. C.	136-51	10/18	190.80
G. H. S. A.	5327	10/19	183.70
M.	21226	10/21	143.75
I. C.	97758	10/22	125.90
T. & N. O.	20361-5105	10/25	216.95
Total			\$2547.64

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WITNESS: We objected to the amount of money that was paid, it was paid under protest. We sent the bills back on

the grounds that the railroad companies had incorporated wharfage in the expense bills when we were not responsible for any wharfage, and W. A. Powell Company through error had included it in their statement to us. We did not pay that, we requested that the item of wharfage be stricken off of the expense bills and statement of freight alone rendered us by W. A. Powell Company Ltd., and we would make settlement. Up to that time we had only written to W. A. Powell Company, Ltd. about freight because of course, we couldn't foresee there was any wharfage to be charged. From that point on you will see where we protested against wharfage.

Plaintiff next offers in evidence without objection letter dated November 13th 1906 from W. A. Powell Company, Ltd. to Sabine Tram Company, being as follows, to wit:

"W. A. Powell Co., Ltd.,
Lumber Exporters,
804-805 Hibernia Bank Building.

NEW ORLEANS, LA., Nov. 13th, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIR: We have taken the liberty of drawing S/D on you for \$2501.52 account of freight paid on sundry cars for your account as Sabine, which we would ask you to kindly protect on presentation. You will note that we have deducted the \$46.12 which we overcharged you, being wharfage charges which we have to pay.

Yours truly,

W. A. POWELL CO., LTD.,
W. J. CALLEN.

Die. W. J. C.

WITNESS: The amount of \$2501.52 for which a sight draft was drawn, the amount covered by the statement of November 212 6th 1906, less the wharfage, we objected to and would not pay. It was the item of \$46.12 that we objected to.

Plaintiff next offered in evidence a letter dated November 16th 1906 from the Sabine Tram Company to the W. A. Powell Company, Ltd., same being admitted without objection, and the same being as follows:

Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B. Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band Sawed Long Leaf Calcasieu Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

All agreements made contingent upon strikes, fires, accidents or causes beyond our control.

C. E. Walden, Assistant-Secretary.

Cable address, "Smyth."

All standard codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity of planing mills, 75 million feet.

BEAUMONT, TEXAS, 11/16/06.

W. A. Powell Co., Ltd., New Orleans, La.

GENTLEMEN: Your favor of the 6th. enclosing E. B.'s covering shipments made by us from our Ruliff mill to Sabine, received. We found that your representative in paying these E. B.'s had permitted the Railroad Company to insert wharfage in same and that you had charged the wharfage to our account, amounting to \$56.12, whereas, we should have only been charged, under our contract for the delivery of this material to Sabine, for the freight to Sabine amounting to \$2501.52. We called Mr. Flanagan to our office and explained the matter to him and advised we would have to have a new set of E. B.'s simply showing freight for which we were only responsible, before we could pay same. He advised 213 your Mr. Powell would be in Beaumont in a day or two and we held the matter for his arrival. He, however, failed to come.

Yesterday your draft for \$2501.52 to cover freight was received and Mr. Flannigan advised us he had explained to you that you had charged the wharfage to us in error and this accounted for the reason you drew for the correct amount when your statement called for freight and wharfage. We have instructed the bank to return your draft as we cannot accept E. B.'s showing any wharfage whatever as this is a matter in which we are not at all interested, therefore do not want same to appear in the E. B.'s. We are returning the E. B.'s to you herewith and must ask that you have same replaced by others covering freight and freight only, when we will be pleased to remit you in full to cover all freight money we are due you.

We do not desire to work any hardship on you, however, and we are accordingly enclosing you herewith First National Bank check #36579 on the State National Bank of New Orleans for \$2300.00. We are charging this to your account direct and when you return us the E. B.'s properly made out, we will then pass this amount to the credit of your account and charge to freight account where it properly belongs and will then remit you promptly to cover the balance of freight due.

Trusting that you will appreciate our position and that you will give the matter of having proper E. B.'s rendered us your prompt attention, we are,

Yours very truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W-M.

Enclosure.

Plaintiff next offered in evidence a letter dated Nov. 22nd 1906 from W. A. Powell Company, Ltd., to the Sabine Tram Company, which was admitted without objection, same being as follows:

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W. A. Powell Company, Limited.

Lumber Exporters.

804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 22nd, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: We have before us your favor of the 16th inst. referring to the matter of freight.

It is entirely in order that we should pay the wharfage on the cars, and we therefore deduct from our debit note \$56.12, which leaves \$2501.52. You sent us a check for \$2300, and we therefore kindly request you to send us an additional check for \$201.52. Mr. Flannigan has handled this entire matter, and we therefore kindly request that you arrange with him for obtaining separate bills for freight and wharfage. In the meantime we will appreciate your remittance as the amount only represents an outlay for your account.

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN.

Dis. H. J.

P. S.—Enclosed find freight bills.

WITNESS: These original letters from the Powell Company, Ltd. came into our possession by reason of our request made upon the receivers of W. A. Powell Company, Ltd., to send them to us under our promise to return them to their files after we got through with them, so that we could use them in this trial.

Plaintiff next offered in evidence letter dated December 12th 1906 from Powell Company, Ltd., to Sabine Tram Company, same being admitted without objection, and being as follows, to wit:

W. A. Powell Company, Limited.

Lumber Exporters.

804-805 Hibernia Bank Bldg.

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NEW ORLEANS, U. S. A., Dec. 12, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: With reference to our previous correspondence regarding the railroad freights we paid for your account at Sabine, the expense bills of which showed besides the freight also the wharf-

age paid for each car, we now have a letter from the Tex. & N. O. R. R. Co., which we herewith enclosed, stating that it has always been a custom to issue one bill for freight and wharfage, and that they cannot make a change for the cars which are shipped by you to Sabine. Under the circumstances we regret that we cannot be of any assistance to you, and we therefore kindly request you to remit us for the balance of the freight charges paid for your account.

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN.

Dec. H. J.

Enclosure.

Plaintiff next offered in evidence letter from A. R. Atkinson, admitted to be the division freight agent of the Texas & New Orleans Railroad Company at the time of these transactions, located at Beaumont. This letter was referred to in the preceding letter. It is also admitted that Mr. Atkinson was acting on behalf of the Texas & New Orleans Railroad at the time this letter was written, and that his division included Sabine and Sabine Pass. The letter is dated December 6th 1906, and was admitted without objection, same being as follows, to wit:

7-27-06-5M.

Local (old form)

(Sunset Route. Oil burning Locomotives. Ocean to Ocean.)

Texas & New Orleans Railroad Company.

Office of Division Freight and Passenger Agent.

In reply please refer to No. 4.

216 A. R. Atkinson, Division Freight and Passenger Agent.

BEAUMONT, TEXAS, 12/6/06.

The W. A. Powell Co., Ltd., 804-805 Hibernia Bank Bldg., New Orleans, La.

GENTLEMEN: Your favor of December 5th relative to freight bills at Sabine including wharfage. It has been the custom of our accounting department at Sabine to include the wharfage on these freight bills. I had this matter up at request of your Mr. Flannagan to have separate freight bills issued covering freight and wharfage but am advised by our company that it is not desired to change this old established custom, and I am therefore unable to comply with your request, as much as I desire to do so.

Yours truly,

A. R. ATKINSON.

Plaintiff next offer in evidence receipt dated December 14th 1906 from Powell Company, Ltd., to Sabine Tram Company, referring to the shipments, which is as follows:

Law Office
Greer, Minor & Miller
Beaumont, Texas.

Geo. C. Greer. F. D. Minor. W. E. Miller.

BEAUMONT, TEXAS, Dec. 14, 1906.

Received of Sabine Tram Company \$3156.03 Dollars in full payment of amount advanced by us in payment of freight, as shown by expense bills listed below 1906, of T. & N. O. Railroad Company. The item for wharfage contained in said expense bill is an incorrect charge against the Sabine Tram Company, and said Company refuses to pay the same, and this is to show that we do not claim said item of wharfage against Sabine Tram Company, same being an erroneous charge against said Company.

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W. A. POWELL COMPANY, LTD.
W. A. POWELL, Manager.
Pro W. J. CALLON

S. W.	5826	\$91.80
H. E. W. T.	3532	72.00
H. T. C.	403	70.65
L. W.	20032	98.70
F. S. W.	5447	117.60
L. W.	15704	78.60
T. N. O.	20361)	211.65
M. S. L.	5105)	
I. C.	92758	122.85
F. S. W.	5667	108.90
M.	21226	140.25
G. H. S. A.	4198)	179.25
L. W.	5329)	
H. L. C.	136)	186.15
H. L. C.	51)	
S. P.	78809	123.60
M.	2117	136.80
S. A.	40259	117.45
K. C. S.	25288	94.95
K. C. S.	24517	93.75
K. C. S.	21494	93.15
S. P.	55507	71.90
S. P.	55507	1.00
T. N. O.	3174	83.40
K. C. S.	26008	116.10
K. C. S.	25197	126.45
S. A.	1140	60.00
Q. C.	3011	24.00
Q. C.	3011	36.00
S. P.	59100	55.80
S. P.	59100	37.28
K. C. S.	24751	65.60

SABINE TRAM COMPANY.

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	K. C. S.	24751	37.20
218	K. C. S.	25187	52.92
	K. C. S.	21629	60.24
	K. C. S.	21139	38.81
	K. C. S.	21139	25.74
	K. C. S.	21629	40.14
	K. C. S.	25187	35.26
	T. F. S.	21037	36.00
	T. & F. S.	21037	24.00

\$3156.03

WITNESS: This receipt does not embrace the payment of any freight outside the freight on these shipments, just covers the payment we made to Powell Company, Ltd., the final settlement that we made with Powell Company, Ltd. on freight covering the cars shipped from Ruliff to Sabine after they failed to get the Railroad Company to eliminate the item of wharfage, then we simply had them state in their receipt what it does. That payment does not include wharfage, only includes the freight on the cars; it does include the part I held up pending having new expense bills issued with the item of Wharfage left out. That was a payment on the entire 33 cars. It was a total of all the freight due when we made final settlement on those cars. I know nothing at all about the wharfage charge, as to whether it was correct or not, but simply that it was not chargeable to us. That was a matter between Powell Company and the Railroad Company in which we were not interested. In this statement the number of pounds are not footed up, they are footed up in the expense bills and the recapitulation in the expense bills I believe shows the pounds.

Plaintiff next offered in evidence a letter dated December 18th 1906 from the Sabine Tram Company to W. A. Powell Company, Ltd. which is as follows:

(NOTE—The letter head of this Company is the same as shown on pages 11 and 12 hereof, same being copied in full on those pages.)

BEAUMONT, TEXAS, December 18, 1906.

W. A. Powell Company, Ltd., New Orleans, Louisiana.

219 GENTLEMEN: We beg herewith to enclose First National Bank draft No. 36785 on the State National Bank of New Orleans for \$730.87 in settlement of balance of freight due you on statement rendered by your letter of Nov. 22nd., also your Debit Memorandum of December 6th. We would thank you to sign and return the enclosed receipt for \$3156.03 covered by our remittance of November 7th for \$125.16, November 11 for \$2300.00 and December 18 for \$730.87 showing that we have paid you for freight only and that we are not in any way responsible for any wharfage

shown on any of the expense bills and that our responsibility ceased entirely when we delivered the material to you at Sabine.

Please give this matter your immediate attention and oblige,

Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W. D.
Enclosure.

WITNESS: The payments referred to in that letter were actually made by the Sabine Tram Company, they were to refund the freight advanced by W. A. Powell Company, Ltd.

NOTE.—Here this witness was temporarily set aside, and another witness called.

W. A. SMYTH, sworn for the plaintiff testified as follows:

Direct examination:

I live at Deweyville, and in 1906 was in the employ of the Sabine Tram Company. The Texarkana & Ft. Smith Railway Company had an agency or railroad agent at Ruliff, and did have in 1906. The agent was C. C. Root; he was their agent there in the months of September and October 1906. I know his signature. (Witness here identified the signature of C. C. Root to twenty-seven bills of lading and duplicates, and stated that he the witness, did not make up these bills of lading.)

220 C. R. LANE, sworn for the plaintiff testified as follows:

Direct examination:

In 1906 I was connected with the Sabine Tram Company as shipping clerk. I recognize the original and duplicate bills of lading handed me as having been made out by me, the duplicates being mere carbon copies of the originals. I marked the word "Original" on the bills and I marked the word "Duplicate" on the carbon copies of the bills. The marks in red ink on the originals I did not place there, they were placed in there after the bills of lading were executed and left me. (Witness then counted the duplicates numbering thirty)

I have not noticed whether some of these bills of lading are made out for twin cars. (Witness inspects same) Yes, they show on their face that some of them are for twin cars.

Cross-examination:

By twin cars I mean where one bill of lading covers two cars, that is, by twin cars I mean where the long timbers won't go on one car and reaches over on to another car. No it could not be handled on one car; possibly long timbers on one and short timbers on the other, and the long timbers reach over on car on which the short timbers are.

Redirect examination:

I would receive a car in the mill for loading, and I would make out a bill for it, and send the bill to the agent after I made it out, and as soon as that car was sent out to the siding at the station the agent would sign that bill of lading and sent it back, and I would mail it to the office at Beaumont.

As far as I recollect the bills of lading bear correct dates showing the different shipments and the different cars.

Recross-examination:

The bills of lading show the date that the cars were pulled out from the mill to the station at Ruliff, set on the switch. This Lumber covered by these bills was what we called cubic average
221 or merchantable sawn timber. I do not — whether it was export lumber or not. 30 cubic average are timbers that average 30 cubic feet to the stick of sawn timber, that is, the shipment was to average 30 cubic feet to the stick, not 30 cubic inches but 30 cubic feet. It is mostly heavy timber, square timber. I don't know whether that is the kind of timber that is always used in export or not. I have had about two years and a half experience in the saw mill business as shipping clerk. I never did ship lumber at any time to interior points in Texas, to any place where it was required that every stick was to be 30 cubic feet. I don't know who this lumber was sold to, it was shipped to the Sabine Tram Company notify W. A. Powell Company. All that I knew about it was that I was to make out bills of lading for the lumber as they are here made out.

LESLIE POWELL, sworn for the plaintiff testified as follows:

Direct examination:

My name is Leslie Powell. Age about 12 years. I live at Deweyville, Texas. That is close to Ruliff. Have lived there—did live there in 1906. I was employed by the Sabine Tram Company. I heard Mr. Lane's testimony about these bills of lading this morning. All I had to do with those bills of lading was just to carry down those bills of lading to the agent and bring them back, when they were signed. I carried them to the agent of the Texarkana & Ft. S. Ry. & he signed them up.

Plaintiff next offered in evidence the duplicates of the bills of lading, these duplicates being by agreement used instead of the originals, numbered P17 to P46 inclusive. It being admitted that each original bill of lading has endorsed on the back the following words: "Sabine Tram Company, W. W. A. Powell Company, F." And sometimes instead of the "F" the name is written out "C. S. Flanagan."

222 In connection with each bill of lading the plaintiff also offered the expense bills corresponding, same appearing herein as attached thereto, bearing the same numbers with the letter "A" attached to each number, being P17A to P46A inclusive.

(By agreement and under order of the court for convenience, the original documents just referred to, the duplicate bills of lading and the originals and the expense bills are hereto attached, found marked as indicated.)

(In this connection it was also admitted that J. L. McReynolds, the party who signed the expense bills was agent of the Texas & New Orleans Railroad Company at the time when the transactions in question occurred at Sabine, Texas.)

C. E. WALDEN, being recalled by plaintiff, testified as follows:

Direct examination continued:

The expense bills came to me in this form. They collected first six cents on those seven cars, and afterwards collected the balance to make fifteen cents. Then as respects the bill of lading dated October 3rd 1906, showing the shipment of car of lumber in car G. H. & S. A. No. 1140, there is only one expense bill showing a straight charge of fifteen cents. After that date the fifteen cents was collected originally and right straight through. The Texas & New Orleans Railroad Company knew at the time that the Sabine Tram Company was paying this freight; I know that because I had a talk with Mr. Alkinson to that effect, he understood that we were paying the freight to Sabine. I complained to him about the six cent rate. I know where the depot at Sabine is located, I have been there. I should judge it to be about a quarter of a mile, probably less, from that depot to the slip where this lumber was unloaded. It is only a few hundred yards across from the depot over to the slip, almost on a line with it, a little further south I should judge.

223 Sabine Pass and Sabine are not the same. Sabine as I understand it, is the new town built by Kountze, some mile and a half below the old town. Sabine Pass is the old town. Sabine is the new town.

Cross-examination:

I think the correspondence already offered in evidence between the Sabine Tram Company and W. A. Powell Company, Ltd., is all of any consequence bearing on that contract that I know of. The first letter that passed was this letter of mine, or Sabine Tram Company, dated August 22nd. The only thing before that was a personal interview between me and Mr. Powell, President of the Powell Company, Ltd. Previous to that I had sold lumber to Powell, or to his Company. My recollection of which is, that it was delivered down at Port Arthur, and some at Sabine. On lumber we had sold to W. A. Powell Company, Ltd. some of it was delivered f. o. b. Sabine and some f. o. b. mill, and some f. o. b. cars at Port Arthur. We never sold him any lumber to be delivered on the docks and wharve- or in the slips at Sabine, or on Sabine Pass opposite Sabine. W. A. Powell Company, Ltd., at the time of the matters in question, were engaged in the export lumber business. I knew his lumber Company as lumber exporters, and I did not know of his lumber

company being engaged in any lumber business other than the export business.

The character of the lumber placed in the contracts, or embraced in the contract with the W. A. Powell Company, Ltd. was a class known as square timber. It was a class of stock that could be exported, it was also, I take it, a class of stuff that could be used at Sabine, material used for any foundations or pilings or anything of that nature you wanted, it was heavy square timbers, not always square, but just heavy strong timbers. This lumber could be used any where where that class of timber would be called for; of course not in frame house but could be used where heavy construction material was called for.

224 My Company never shipped any lumber to Sabine that was to be used, or that I afterwards learned was used in local construction at Sabine or vicinity.

In this order in question 500,000 feet was called for. Each stick of timber embraced in the order was to average 30 cubic feet, no special average for each stick, but was to average generally 30 cubic feet. I couldn't say about what was the average length of the lumber we shipped down there, I never figured that up. There was no specification to run any width and thickness and I never figured up the width and thickness. But the sticks had to be square timbers, I mean by that, each as 8 x 10, 10 x 12 or 12 x 12 or 12 x 14, and long enough to average 30 cubic feet to the stick. I had been connected with manufacture of lumber about seven years before the shipments in question. During that time I never sold bills of lumber of that kind of stuff for local consumption to the various local yards in Texas, interior points. We sold lumber to local yards. The lumber sold for local consumption it was not usual for such a specification to be made as 30 cubic average. This character of lumber or dimension stuff was usually stipulated by exporters to whom we sold. Such lumber was not usually used by local yards, but might have been used by constructors of large buildings. We sold fifty million feet of the stuff I believe, in the neighborhood of that, a large proportion would run timbers of that size, or practically of that size for the construction of buildings at the World's Fair, and it could be used in the construction of other large buildings. So far as we know we never sold any such lumber to be sold at Sabine or Port Arthur locally. At the time we made the contract in question with W. A. Powell Company, Ltd., it is a fact that I knew that they were lumber exporters, and expected that they intended to do something with the lumber but didn't inquire what. Under the circumstances knowing they were lumber exporters, and knowing the character of lumber and all that I expected W. A. Powell Company, Ltd., were going to export or make some other disposition of it. I didn't see this lumber unloaded at the station of Sabine or else where, and didn't authorize them to unload it any where.

When this lumber was loaded on the cars and the shipping clerk made out the bills of lading and had them signed, etc., they were then sent to my office. When I received those bills of lading I

attached them to a sight draft and sent the sight draft with the bills of lading attached through the bank. I made out an invoice of the lumber which had been reported to me to be on that car, at the contract price, and ran out the cubic dimension, run out according to the board feet, board measure. Figured at the price contemplated by our contract and attached that invoice to the bill of lading covering that car of lumber, car that that lumber was on, made a draft for the amount it came to and deposited it here with the bank, that is the First National Bank of Beaumont with instructions to forward that to New Orleans, the draft to be collected from W. A. Powell Company, Ltd., and the bill of lading which was previously endorsed by the Sabine Tram Company, was to be delivered to them on payment of that draft. When that was done we had nothing to do further with the lumber at all, except refund W. A. Powell Company, Ltd., at New Orleans the amount of the freight paid by them at Sabine upon the presentation of expense bills properly receipted, and we arranged with Chris Flanagan to pay the freight for our account. Mr. Flanagan was not on the pay roll of the Sabine Tram Company, but he was the representative of W. A. Powell Company, Ltd., at Sabine. We always recognized him as such and so did Powell.

As to how long after the bills of lading were made out, after their date etc., before they reached my office I would say on an average of not over a couple of days. Upon reaching my office I immediately endorsed them and attached them to sight draft and invoices and deposited them with the bank for collection.

226 As to how long it would be on an average in the actual handling of these things before the bill of lading endorsed by the Sabine Tram Company with the draft attached, would be presented to and taken up by W. A. Powell Company, Ltd., at New Orleans, I should say three or four days at the outside. Not exceeding that. Of course it would be a difficult matter to say just how long one bank would retain it and get it to another bank. I do not know how long it took from the time bills of lading were issued on these cars until the respective cars covered by the bills of lading actually reached Sabine. I don't remember that there was any inspection by any one under W. A. Powell Company, Ltd. The lumber we shipped to W. A. Powell Company Ltd., I only know we delivered it at Sabine. I don't know where they shipped it. I only know what the bill of lading called for. We made delivery by putting these lumber on the cars, making out bills of lading, making out invoices, attaching same to draft and sending same through the bank to W. A. Powell Company, Ltd. Sabine Tram Company didn't make any deliveries except in that way. That is, took the bill of lading and endorsed it and sent it to W. A. Powell Company, Ltd., to be delivered to them on the payment of the draft.

There was one car of this, the car was originally sold to some parties and was to be shipped to them at Port Bolivar, but the shipment was made after the order called for delivery, and it was the class of stuff I believe we got on those orders, and we diverted the car from Port Bolivar and sent it to Sabine Tram Company notify W. A.

Powell. Other than this car we never undertook to control the shipments in transit, or to direct the Railroad Company what to do with the lumber after the bills of lading were taken out by us.

We had nothing further to do with the lumber after taking out the bill of lading except to instruct the Railroad Company not to deliver the material until the bill of lading was surrendered 227 so that we could get our money before the bill of lading was surrendered. As a matter of fact the Sabine Tram Company never had anything to do in relation to this lumber so far as the Railroad Company was concerned in the handling and delivering of it except to endorse the bill of lading and send it to Powell & Company through the bank. Afterward when the expense bills were rendered we repaid the amount of freight to W. A. Powell Company, Ltd.

The letters heretofore introduced in evidence passing between the Sabine Tram Company and W. A. Powell Company, Ltd. show how these payments were made.

There were two or three bills of lading, I don't remember just how many, but two or three, that were delivered to Mr. Flanagan as soon as — received them without waiting to send them to New Orleans, with draft attached. In regard to these when we received these bills of lading draft was made immediately upon receipt of the invoice and filed at the bank, and we knew that we could, and always did find draft paid before the lumber was finally delivered. All these bills of lading were endorsed in blank by the Sabine Tram Company, immediately upon receipt we either delivered to Flanagan direct, as we did in two or three cases, or attached a draft on W. A. Powell Company, Ltd. at New Orleans and deposited it in the bank for collection. Whenever any of the bills of lading came into the possession of W. A. Powell Company, Ltd. our control of the shipment, ceased, and when those drafts were paid by W. A. Powell Company, Ltd., and those bills taken up by the Sabine Tram Company — claimed no further ownership or interest in that lumber and it was not concerned as to where Powell Company caused it to be shipped or anything about it. As shown by the correspondence introduced this morning we instructed W. A. Powell Company to pay the freight to Sabine, which we recognized liability for, and to protest against and object to paying anything in excess of four cents. We never instructed 228 them to tender any one for the Sabine Tram Company a rate of six and a half cents. We didn't know there was any rate of six and a half cents. If six and a half cents was the legal rate at the time we did not know it. As I have stated I was in the office with Mr. Powell when the trade was made for this lumber. By agreement we were to furnish him as much as 500,000 feet, and I believe as indicated from the correspondence we were to furnish him 500,000 feet any how, and as much more as we could if they requested us to do so. We didn't deliver any more than 500,000 feet, but very little, as near as we could. Probably I did, as the letter indicates agree to deliver more than that, but our records don't show that we shipped any more. If we didn't have more of this particular character of lumber we probably could have made it at the time

if we didn't have other orders to keep us from it. That would depend on our ability to furnish it, whether we had any business that paid us better or not. The conversation about the sale of lumber was between myself and Mr. Powell. I don't remember that any one else participated in it.

The contract called for the lumber to be delivered in the water at Orange or f. o. b. cars Sabine Pass or at Sabine. My understanding at the time as to why he was contracting to have the lumber delivered in the water at Orange or at Sabine was that he wanted to buy the lumber at Sabine and we reserved the right to deliver the material at Orange; the right to deliver the material at Orange was made by us and not him. He offered to take it at Orange and not at Sabine. When we delivered it at Orange we were to deliver it in the water at Orange, probably in some of the booms there where the barges load. My understanding by agreeing to accept the lumber at Orange was that he was accepting it where he could load the stuff on barges for export or reshipping, but I didn't ask him what he was going to do.

"Q. If you delivered it at Orange where would you deliver it at Orange?

A. In the water at Orange.

229 "Q. What part of Orange, down where the ships load?

A. I don't think any ships get up there."

"Q. Barges?

A. Probably in some of the booms there.

"Q. Wasn't it your understanding by agreeing to accept the lumber at Orange you were expecting it where it could be loaded on barges for export or reshipping it?

A. Could reship it, but didn't ask him what he was going to do.

"Q. Wasn't it your understanding at the time made this sale that the lumber after it reached Sabine or reached Orange, which ever place you were going to send it to, would be exported?

A. I believe I have answered that; I said I knew they were going to make disposition of it of some kind to some foreign Company, I expected that was what they were going to do.

"Q. Was that your understanding, that he was buying for export?

A. I won't say that was my understanding, I simply say he could have exported it if he wanted to.

"Q. You have been to Sabine frequently?

A. No, I have never been there but once before in my life, that was several years ago, I have been there since.

"Q. Were you there during the time this lumber was exported?

A. No sir.

"Q. Did you see any of the lumber at Sabine at all?

A. No sir.

"Q. Then your knowledge of the facts and wharves is by visiting there since this transaction?

A. Yes sir.

"Q. You didn't suppose that that lumber was going to be used at Sabine did you?

A. No, I don't think I supposed so much about it, what was going to be done with it.

"Q. Did you suppose, as a matter of fact, that they were going to export it?

A. I say I suspected they were going to export it or send it away, or make some disposition of it after they came into possession of it.

"Q. Didn't you believe he was buying it and shipping it to Sabine for the purpose of exporting it.

A. I believed he was going to make some disposition of it after it got to Sabine, either export or whatever he saw fit.

230 "Q. Did you believe he was going to export it?

A. I suspected that he was going to ship it away.

"Q. Didn't believe he was going to do it?

A. I believe I have answered that, haven't I?

"Q. I don't know whether you have or not, didn't you believe he was going to do it?

A. Yes, it was my impression that he was going to ship it away.

"Q. And you believed it at the time he bought the lumber?

A. Yes sir.

"Q. Didn't you know that as well as you know any other fact that is gained in the pursuit of your business, or any question in ordinary business?

A. I won't say.

"Q. Didn't you know as well as you did any other fact connected with your business that came under your personal supervision, didn't you know that that lumber was to be exported?

A. No, I won't say I know it was, I believed it was, but I will not say I know it was.

"Q. Do you remember whether he told you he was buying the lumber for export or not?

A. No, I do not."

He did not tell me he wanted the lumber by any specified date except the order called for delivery during the months of September and October, according to my recollection, 1906. He did not tell me he wanted it delivered that soon because he had already chartered a vessel to carry it abroad, didn't tell me he already had vessels to take it abroad. He wanted it delivered down there as soon as that probably because we told him we could deliver 500,000 feet during those two months. Did not have the lumber cut at that time; I don't suppose the logs were in the mill yard. We make a business of cutting special stuff of any dimensions, and it is not always when we take the orders that we have the logs on hand to make it. It is usual that we do not have the logs on the ground when we take a large order for export. If it goes over to any extent, the delivery, we haven't the logs on the ground. I do not know whether we got all these logs from Louisiana, we undoubtedly
231 got some of them. It does not require extra fine timber to make this export stuff, but it takes a good big tree to make it these particular sizes sticks of timber that was included in this order.

Most any mill that could handle logs at all could cut these big square timbers of export if they had the timber suited for it. The timbers were large square timbers. I do not know what they do

with these timbers after they ship them abroad, whether they saw them up afterwards or not, but these big square timbers could be sawed up afterwards, and they probably do that. I imagine that they do.

Regarding these bills of lading that I delivered to Mr. Flanagan in person, I expected our draft would be paid before the car reached Sabine, and therefore the lumber would be paid for before the Powell Company could come into possession of it. I don't know that the drafts would always be paid before the lumber reached Sabine, but it would be paid at least before they could get hold of the lumber. If he had the bill of lading he could get it just as soon as the lumber got there, but we expected our money to be paid by the time the lumber reached there.

I didn't know where this lumber was to be unloaded at Sabine, but I supposed it was going to be unloaded on the docks or slips some where. I thought that at the time our Company made the shipment, and I thought that at the time Powell contracted for the lumber. We had sold lumber to Powell before, and we shipped through him at Port Arthur as well as at Sabine. While I have a vague recollection that we sold him some stuff f. o. b. mill, I can't tell exactly when, and I can't absolutely identify the stuff. We collected for that by draft. With the exception of attaching the bill of lading to the draft the collection was made the same whether it was f. o. b. mill or Sabine. In each case the draft would be put in the bank here at Beaumont and the bank collected through some other Bank from Powell. It is a fact, I expected, in so far as the handling of the lumber, the loading of it on the cars, the shipping it
 232 out and handling it at Sabine Pass, that the same action and the same service was performed by the railroad company whether we paid the freight to Sabine or whether we sold the lumber delivered at the mill. Where we sold the stuff delivered we would pay the freight, that was a matter of contract between ourselves and Powell. If both of us were willing to contract to deliver the lumber at the mill Powell paid the freight, and if it was delivered at Sabine the Sabine Tram Company paid the freight. But other than that the movements and handling of the lumber was the same, whether they paid the freight or we did.

It was my understanding that all this lumber was unloaded down at the slips or wharfs and loaded on ships and sent abroad.

With reference to these first seven cars sent there, when the expense bills were sent back to me I noticed that the railroad had charged six cents per hundred pounds. That was not the first notice I had had that the railroad was charging six cents. Mr. Flanagan advised that they wanted to collect six cents and ask me what he should do about it, and I said pay it under protest. That was when the cars first reached there, this seven cars. The freight was eventually paid out of our money. At the time it was paid the Sabine Tram Company did not put the money down there to pay the freight with. It was paid out of Powell Company's money by Mr. Flanagan I presume. In a letter heretofore introduced to Powell we gave notice that the freight was to be paid under protest. I presumed

that Powell would furnish the money to pay the freight and I spoke to Flannagan direct and requested him to pay the freight for our account. I also wanted Powell Company to understand that he was paying the freight for us. I think I wanted Powell Company to instruct Flannagan to pay it under protest. There is a letter that will show how long it was after the first seven cars were shipped before the expense bills were sent back to us, showing that we paid six cents. By referring to this letter I can see the exact date. His letter is dated October 30th, that is the first letter sending in the expense bills for the seven cars. At that time all the lumber had not been shipped. I presume they had only received those seven cars, that is all the expense bills rendered in that statement. The expense bills speak for themselves, which as a matter of fact show there was a wharfage charge paid by Powell Company.

(The witness here produced a statement which he had made from the books of the Sabine Tram Company, this statement being afterwards introduced by the defendant and marked exhibit D 8, in regard to which he testified as follows:)

The total amount of money that we got from Powell Company Ltd., for that lumber, according to that statement was Ten thousand eight hundred and sixteen dollars and eighty five cents. That must be correct, it is supposed to be made from our books. That was the value of the lumber with the freight added to Sabine; that was the value of the lumber delivered at Sabine, the freight to come off. That statement shows three remittances by us to W. A. Powell Company, Ltd. so that the value of the lumber would be the sum first mentioned, ten thousand eight hundred and sixteen dollars and eighty five cents less the amount of the three remittances which we paid to cover the freight. I instructed a correct statement to be made from our books, and I should say this is a correct statement, I accepted it as a correct statement furnished from our books. It was made under my instructions by my request.

Redirect examination:

On examining the expense bills showing six cents charge I find that they show charge for wharfage also either on the original or corrected bill. The Sabine Tram Company did not have anything to do with making arrangements or contracts with any ship or means of transportation beyond Sabine, not a thing.

Recross-examination:

I understand from hearsay that this lumber was all shipped from the slip wharves and docks of the Texas & New Orleans Railroad Company at Sabine to points in Europe on the ships "Manchuria", "Olive Moore" and "Shilford", "but I don't know that that was the names of the vessels.

If part of it was shipped on the "Manchuria", if the "Manchuria" was chartered for that purpose on August 16th, 1906 that vessel had been chartered before Powell made the contract with me for

that lumber. And if the "Chelford" carried some of this lumber to Europe from Port of Sabine and was chartered by Powell Company for that purpose on August 26th, 1906, or August 28th, 1906, that, if the 26th, two days before, and if the 28th, it was the very day that Powell Company made the contract with us, although he said nothing to me about chartering the vessels and if Powell Company shipped the balance of that lumber obtained from us to points in Europe on the "Olive Moore", and this ship was chartered by them on the 23rd of October 1906, then that was chartered during the pendency and before the completion of the shipments contemplated by us. I believe we made two or three shipments after that; yes, we made four or five shipments after October 23rd 1906. The expense bills show a wharfage charge of \$1.50, and I understand it is a charge made for the privilege of handling lumber across the wharf from the railroad cars across the wharf onto the ships, that is my understanding. We never paid any wharfage, never contracted for any. I presume it was it was for handling the lumber, or keeping the lumber on the shipping wharves.

These statements I have been testifying about contains I presume, all the entries on the Sabine Tram Company's books relative to the contract. I instructed the book keeper to make up a statement covering these 33 cars and this is what they rendered me, and I accept it as being correct. It is a complete statement as shown on our books of the transaction with the Powell Company, Ltd., in regard to these 33 cars involved in this suit.

Redirect examination:

The first knowledge I had as to what boat was to be used and as to what point to which the lumber was carried beyond Sabine, after its shipment there, was received from reading Mr. Flannagan's deposition after this suit was filed.

We made a pretty thorough examination in a general way about handling lumber down that way. I know there is a great deal of lumber handled from Orange down the river by towing or floating. We never made any deliveries that way, and I am not prepared to say where they carried it, whether that lumber is all carried to the Port Arthur Ship Dock or Sabine for export or coastwise movement. I suppose those are the only places they can carry it to tranship it. Sabine is on the Gulf of Mexico; it is a port of transshipment, a port where vessels come in and load for foreign ports.

C. S. FLANNAGAN, being sworn for plaintiff testified by deposition as follows:

Direct examination.

My name is C. S. Flannagan, I am 29 years of age, reside in Port Arthur. Up to April 13th 1907 I was agent for the W. A. Powell Company, Ltd., and resided during the year 1906 at Port Arthur, Texas. I was connected with W. A. Powell Company, Ltd. as local agent in Texas from August 1906 to January 1st 1907. The business of W. A. Powell Company was exporting timber and lum-

ber. I have knowledge of the purchase by W. A. Powell Company, Ltd. from the Sabine Tram Company of lumber shipped from Ruliff, Texas to Sabine, Texas, about September and October 1906.

236 33 cars of lumber were involved. That lumber was shipped from Ruliff to Sabine, Texas, shipped via Texarkana & Ft. Smith Railway from Ruliff to Beaumont, and over the Texas & New Orleans Railroad from Beaumont to Sabine. I attended to the receiving of the lumber at Sabine. I was acting for the Sabine Tram Company in receiving the lumber and paid the freight on the shipments for the Sabine Tram Company. That is, I was acting for the Sabine Tram Company in paying freight charges, after which I took charge of the stock for the W. A. Powell Company, Ltd. And I handled it and shipped it according to their instructions. Each car of lumber was unloaded from the car into the Southern Pacific slip No. 3 and carried in stock for W. A. Powell Company until shipped. The lumber remained in the slip any where from 1 to 60 days, according to the time each car was received, and after the lumber was unloaded into the slip the same was under control of W. A. Powell Company, Ltd. None of the lumber was unloaded directly from the car onto the ship. Cars as they arrived were discharged into slip No. 3 at Sabine and the lumber held in stock of periods from one to thirty days, and afterwards shipped on the "Manchuria", "Olive Moore", and "Chilford".

W. A. Powell himself purchased this lumber, and after the lumber was delivered to purchasers at Sabine I controlled it as the agent of W. A. Powell Company, Ltd. The terms of payment were sight drafts with bill of lading attached. Draft drawn on W. A. Powell Company, Ltd., at New Orleans. I looked after the shipments of lumber out of Sabine for W. A. Powell Company, Ltd. The lumber was shipped to Europe on steamers chartered by W. A. Powell Company, Ltd. My duties consisted of superintending the lumber, loading of the lumber, and I carried out the shipping instructions of W. A. Powell Company, Ltd. The contract for shipping from Sabine was made by W. A. Powell Company, Ltd., at New Orleans; Sabine Tram Company, Texas & New Orleans Railroad Company, and Texarkana & Ft. Smith Railway Company had nothing to do

with making any contracts with ships which carried the
237 lumber from Sabine. I had control of the forwarding of the lumber from Sabine for the W. A. Powell Company Ltd. after its arrival at Sabine. The steamship "Manchuria" was chartered on August 16th, 1906. The "Olive Moore" was chartered October 23rd 1906, and the "Chilford" was chartered August 26th 1906. The steamships "Manchuria" and "Chilford" were chartered before any of the lumber arrived at Sabine, and some of the lumber arrived after the "Olive Moore" was chartered. The charter of the "Manchuria" was made by W. A. Powell manager for W. A. Powell Company, Ltd. and Arthur H. Page, Manager and Treasurer of the Arthur H. Page Company, both of New Orleans. All three charters were made by the same Companies, the same parties, and on the dates mentioned. The Sabine Tram Company, did not exercise, nor attempt to exercise any control over said lumber after

its delivery at Sabine, and after it had received payment therefor. So far as I know the Sabine Tram Company never made any agreement with the W. A. Powell Company, nor with either of the Railroads to pay wharfage. I do know the controversy with reference to wharfage. I do know of a controversy with reference to wharfage. When the expense bills were presented in addition to the amount of freight it contained a charge for wharfage against the Sabine Tram Company. I protested against it telling the agent of the T. & N. O. Railroad that the wharfage was a charge against the Powell Company and the freight only against the Sabine Tram Company, and requested that the wharfage charge be cut out of the bill. This the agent refused to do, and I paid the bills and sent same to W. A. Powell Company at New Orleans with the report that the Railroad Company refused to cut out the wharfage charge against the Sabine Tram. I paid the same under protest and had the agent note the protest on each bill. W. A. Powell Company, Ltd., sent the expense bills to Sabine Tram Company, which Company returned them to W. A. Powell Company, Ltd. to have wharf-

238 age charges eliminated. W. A. Powell Company returned the bills to me with the request that I take the matter up with the Railroad Company and have the charge cut out; I made the request of the Railroad Company and it was again refused. W. A. Powell Company paid the Railroad Company the wharfage and the freight, the Sabine Tram Company refunded the freight. The steamship "Manchuria" sailed September 26th 1906, carrying lumber which arrived in cars No. 21629 K. C. S. No. 21139 K. C. S. 25187 K. C. S.; and the steamship "Chilford" sailed October 24th 1906 bearing the lumber which arrived at Sabine on cars Nos. C. & S. F. 21037 K. C. S. 24751, S. P. 59100, C. C. 3011, G. H. & S. A. 1140, K. C. S. 25197, K. O. S. 26008 and C. & M. O. 3174, K. C. S. 21494; S. P. 55507, K. C. S. 25471, K. C. S. 25288, G. H. & S. A. 40259, F. L. & C. 21117 Ft. Scott & Western 5447, L. W. 15704, L. W. 5826, H. & T. C. 136 and 51, G. H. & S. A. 4198; L. W. 5327.

The "Olive Moore" sailed November 21st 1906 carrying the lumber which arrived on the following cars; S. C. 78809, M. L. & T. 21226, Ft. S. & W. 5667, I. C. 97758, M. L. & T. 5105, T. & N. O. 20361; H. C. & W. T. 3532, H. & T. C. 403, L. W. 20032. I should approximate it that the cars arrived from one to thirty days before they were shipped. I paid the freight on the lumber, it was paid for on account of the Sabine Tram Company. It was paid to the agent of the T. & N. O. at Sabine. No arrangements were made by the Sabine Company with or through me with reference to the payment of freight on these shipments, but on all the f. o. b. shipments it is customary that we pay the freight and the fellows or parties selling, the seller refunds the freight on presentation of the expense bills. I was acting in this matter for the Sabine Tram Company.

Cross-examination:

W. A. Powell Company, Ltd. was organized February 1906 succeeding the Reeves-Powell Company, Ltd., and I was local agent

in Texas for the Reeves-Powell Company from June 1904 to the time it was succeeded by the W. A. Powell Company, Ltd. and was such agent for the latter Company until it went into the hands of a receiver June 1907. My duties were to purchase lumber, superintend the cargoes, ship manifest according to contract, such manifest always being sent to me by the New Orleans office. It is a fact within my knowledge that W. A. Powell Company, Ltd. was, from September 1st to December 1st 1906, engaged in the business of buying and exporting lumber, or shipping lumber to other States and Countries through Port Arthur Canal and through Sabine Pass, from Sabine, Texas. At that time the W. A. Powell Company, Ltd. did not sell any lumber to the local trade either at Sabine or Port Arthur to my knowledge. It is a fact that their business was exclusively that of exporting, shipping lumber through said water-ways and the Gulf of Mexico.

With reference to the knowledge of the Sabine Tram Company that this lumber was for exporting, the only facts that I know with reference to the knowledge of the Sabine Tram Company or officers of the Sabine Tram, is, that they knew that W. A. Powell was engaged in the business of exporting lumber, and might have assumed that this purchase was for export. I paid the freight there on the cars from Ruliff to Sabine as the agent of the Sabine Tram Company, I did not pay the freight for the Powell Company, Ltd. I could not have obtained the possession of said cars without paying the freight and surrendering the bill of lading. I sent the bills to W. A. Powell Company, Ltd. with my regular monthly statements. I have not these expense bills as they were sent to the Sabine Tram Company who refunded the freight money paid on them to W. A. Powell Company, Ltd. In regard to my paying freight on these shipments, I made no agreement with the Sabine Tram Company or with any officer connected with it, I simply acted as their agent as I had done in all other instances of the same kind. I know that this freight paid by the Powell Company was refunded to the W. A. Powell Company by the Sabine Tram Company by being deducted from the gross price of the lumber, I know this by reason of having seen additional copies of the purchase which showed that it was. I received no instructions from the W. A. Powell Company, Ltd. with reference to the payment of freight. I acted on my own judgment and knowledge of how such transactions were usually done. The only information I have regarding the terms of the contract of purchase by the W. A. Powell Company, Ltd. from the Sabine Tram Company of the lumber in question was from seeing a copy of the original order which showed it to be an f. o. b. shipment, sight draft bill of lading attached. The contract was in writing and is now with the receivers of the Company in New Orleans. (now, referring to date the witness was testifying by deposition which is June 1st, 1907.)

Cross-examination on behalf of the T. & N. O.:

The witness testified:

From September 1st till November 1906 I was local agent in

Texas for W. A. Powell Company, Ltd., and my duties being to purchase lumber, pay freight and wharfage and superintend loading of cargoes, ship contracts according to manifests forwarded to me from the New Orleans office. My employment with W. A. Powell Company began January 1st 1906 and terminated when the Company went into the hands of receivers in April 1907. The nature of the business of W. A. Powell Company, Ltd. was exporters of timbers and lumber. My immediate superior in this Company was W. A. Powell, manager of the Company, his address being New Orleans, Louisiana. After the Company went into the hands of receivers I represented the receivers from April 13th to May 31st 1907. The purchases of the lumber in controversy was made by W. A. Powell Company, Ltd. for his own account and not as broker or agent for any other party. I do not know whether the lumber was bought to fill any other order already received or whether it was still an order that was being negotiated. I have already stated that this lumber was shipped to Europe via Sabine, and named the vessels on which it was shipped. The "Man-
241 churia" billed for Greenock, Scotland; the "Olive Moore" to Aberdeen Queenboro, and the "Chelford" for Zaandam Holland. Sometime after the vessels were chartered I was notified by the W. A. Powell Company, Ltd. to load the vessels named with the different specifications, and I was also notified of the destination of the several vessels. The Sabine Tram Company was not notified of these particulars by any body, the Sabine Tram Company had nothing to do with it. It is a fact that the lumber was shipped to points outside of the United States and America. The lumber was originally intended for export outside of the United States, but I do not think it was known that the lumber was destined for the Ports mentioned above before it left Ruliff. This lumber is what is known as export stuff, and was evidently selected and sawed with the view of supplying export demand. This lumber was such, in my judgment, that any well posted lumber or mill man in East Texas would have known that it was intended for export. I did not receive or call or pass upon the classification of this lumber. The service of classifying, inspecting, culling etc., was performed by J. J. Faulkner, my agent at Sabine after the lumber was discharged into the slips. None of this lumber was received at Ruliff on what is known as mill inspection before it was loaded on the cars. The purchase was made by W. A. Powell in person in Beaumont, and additional order was furnished me from the New Orleans office, which is now in the hands of the receivers at the New Orleans office, which shows a price of \$21.00 per thousand feet f. o. b. cars Sabine. Terms of payment sight draft attached to bill of lading drawn on W. A. Powell Company Ltd. These drafts were paid at New Orleans and the bills of lading returned to me by W. A. Powell Company, Ltd. I presented the bills of lading to the agent of the T. & N. O. at Sabine, paid him the freight charges and he delivered me the goods. The bills of lading, drafts etc. are in the hands of the receivers at New Orleans, and I can not

attach them or copies of them. Drafts were made to the full amount of the lumber shipped on each car. I paid the freight in full, and W. A. Powell Company, Ltd., paid the draft in full. The expense bills for freight were then presented to the Sabine Tram Company and it refunded the amount of the freight. Upon remittance by me to W. S. Ward at Sabine he paid the freight for me and in some instances I paid the freight myself. I paid the wharfage charges for the W. A. Powell Company, Ltd. The Sabine Tram Company returned all monies paid by the W. A. Powell Company, Ltd. for freight charges. The lumber was unloaded into the slips from the cars by Flannagan, & Sons, Stevedores, under their contract with W. A. Powell Company, Ltd. Flannagan & Sons also loaded the lumber from the slips to the ships, and the lumber was discharged into the slips in order to measure the lumber, and also to accumulate enough to make a cargo. When the expense bills were presented they showed a rate of fifteen cents, and I had been before that time been paying four cents per hundred under the rate fixed by the Railroad Commission. When I was presented with the fifteen cents rate I phoned to C. E. Walden, manager of the Sabine Tram Company, and told him of the extra charge, he instructed me to tender the Railroad Company the four cent rate, and if they refused to take it to pay the fifteen cents under protest which I did, and a notation by the agent on each expense bill shows my protest. There was no arrangement as to contesting the rate question, nor who should benefit by the rate; there was no understanding or agreement as to the division of the difference between the four and fifteen cent rate. The lumber was not disposed of at Sabine. I believe Powell Company, Ltd. did not attempt to dispose of it at Sabine, it was not unloaded at the place where local freight is unloaded at Sabine. It was forwarded to the docks of the Railroad Company, and unloaded into the water. Bills of lading in every case were surrendered to the Company before the cars were unloaded into the slips. It is not a fact that this lumber was intended for any particular vessel.

243 It is a fact that it was intended for export outside of the United States. It is a fact that it is necessary to accumulate lumber at a port before the arrival of a steamer. It is a fact that car loads of lumber remained in Sabine after the loading of one or two of the ships I have named, but the stuff did not suit the specifications of the first two vessels, and arrangements were made for the same to go forward on the last steamer. The lumber did not remain in Sabine any longer than W. A. Powell Company, Ltd. could charter a vessel to carry it away to make sales of same on the other side. W. A. Powell Company, Ltd. was between September 1st and December 1st 1906 engaged exclusively in the business of exporting lumber, exporters of lumber. This Company was not engaged in the retail business, nor in the business of selling lumber at Sabine. W. A. Powell Company, Ltd. were known to the Sabine Tram Company as exclusive exporters of lumber. W. A. Powell Company, Ltd. purchased lumber for export from the Sabine Tram Company prior to the shipments inquired about that

is, prior to the shipments involved in this suit. In regard to the other purchases made from the Sabine Tram Company by the W. A. Powell Company, Ltd., some of these purchases of lumber were made f. o. b. cars at Ruliff, and some f. o. b. cars at Sabine. The shipments were uniformly handled as the shipments involved in this suit. I had no conversation with the officers of the Sabine Tram Company about the rate on these shipments except the one I have testified about with Mr. C. E. Walden when I notified him of the fifteen cent charge and he advised me to pay it under protest. Had no conversation with either the Sabine Tram Company or W. A. Powell Company, Ltd. touching on this point. My employers, W. A. Powell Company, Ltd., intended this lumber for export to Europe, and hence did not have the lumber unloaded where domestic shipments were unloaded, but instead these shipments went forward to the docks and slips of the T. & N. O. Railroad Company at Sabine where we were accumulating a cargo of which this lumber was a part. I cannot attach bills as asked

244 for because they are in possession of the Sabine Tram Company. I paid such bills for the account of Sabine Tram Company and then sent them to W. A. Powell Company, Ltd., at New Orleans and W. A. Powell Company, Ltd. sent them to the Sabine Tram Company and received the freight money on them. I paid fifteen cents per hundred freight charges under protest and asked the Railroad Company to make a separate bill for wharfage as that charge was properly against the W. A. Powell Company, but the Railroad Company failed to do so. I paid the wharf charges in addition to the freight. Those bills are marked paid "under protest." Such endorsement was made under my instruction from Mr. C. E. Walden. This refers to freight charges only. On all shipments previous to this time I had paid four cents instead of fifteen cents. I had not previous to this shipment paid any freight on export shipments, any rate on export shipments, higher than the Texas Railroad Commission rate on domestic shipments from the same point of origin to Sabine, Texas.

(12th Cross-Int.) "It is a fact is it not, that any shipments of lumber going through the Port of Sabine, Texas, to foreign countries could be handled and billed in a similar manner to that in which the shipments above inquired about were handled and billed to and from Sabine, Texas? A. It is a fact that any shipment of lumber through Sabine to foreign ports could be handled and billed as this shipment was handled and billed to and from Sabine, Texas."

(Witness C. S. FLANNAGAN being duly sworn for the plaintiff, testified as follows:)

Direct examination:

I am the Mr. Flannagan whose depositions were in evidence yesterday. When I paid the freight to the T. & N. O. Railroad Company's agent at Sabine, I did not inform him or explain to him on whose behalf it was, but when I was presented the expense bill showing a six cent rate, not having paid more than four cents on previous

shipments, I called Mr. Walden to the phone, because knowing it to be for their account, this being an f. o. b. shipment,

245 I wanted his advice, and he said tender the four cents and if they refuse to take that, then pay six cents under protest. I didn't explain to the agent whether it was the Sabine Tram or W. A. Powell Company; Ltd. I just protested it as he asked me to do and I thought that was sufficient, and the protest was noted on the expense bill. I explained to him afterwards and he said that was all right. In regard to inspection, in making purchases we bought from different mills as well as the Sabine Tram Company, as terms could be secured more profitable to us, and this shipment being an f. o. b. shipment we accepted mill inspection on it. Whether the mill inspected it or not I don't know, but it was agreed that it would be mill inspected. They rendered us their invoice. The contract did not have anything in it to the effect that we would accept mill inspection but it was a verbal understanding that it would be mill inspected. Any shipment that came up that we didn't inspect or send inspectors to their mill was to carry mill inspections. I don't know whether that was in the contract with the Sabine Tram Company or not but it was always understood that what was not inspected by our inspector was to be mill inspected, and we accepted the bill of lading and pay for it and that settles it. If we got the number of pieces of that kind of timber we had our contract filled: if some of the sticks were rotten or bad then we would have some reclamation, but in order to determine and know that we had the amount that this invoice provided for, I had an inspector measure the timber all over again for my own information; I didn't ship it on their measurement because there is a gain in the measurements shipped from this Country across, as well as measurement on the other side, Queen or Queen's calibre measurements give you a quarter inch, and we get the benefit of that which of course in the cargo amounts to some feet. That is why we have it measured down there, to get this gain. W. A. Powell

246 Company, Ltd., purchased lumber from other mills besides the Sabine Tram Company, at that time. Some lumber from the different mills went into each of these shipments. In one instance there, in finishing loading the ship "Chelford" we had sufficient cargo to load the boat and give her her cargo, but not sufficient stuff to complete the cargo as called for, therefore we made the shipment good as far as in completing the contract as we could out of the material on hand. The contract called for 30 cubic average, understood to be 30 cubic feet on the whole, had to average 30 cubic feet in each stick, not every stick had to be 12 x 12—30 feet long, but they could have supplied 9 x 9, we could have supplied them 28 feet long if we cared to, and if they had they would have had to furnish 18 x 18—30 feet long to make it an average, that was left to their discretion. I will say this, that it takes about 40 per cent of 12 x 12's 30 feet long to fill a bill of 30 cubic average, and you can judge about how much over that thickness it has got to be to furnish or make such an order, and this particular ship "Chelford" we had to furnish a full and complete bill of lading with 30 cubic feet average and specifications. We are allowed 10 per cent more or less under

contract; We got inside the ten per cent but we didn't have enough to fill the boat, to make the full shipment of 30 cubic average, but we did have enough to fill the boat with sufficient smaller timber, and sufficient smaller average, and we loaded it on a separate bill.

The "Manchuria" sailed September 26th, she may have cleared two or three days earlier, but she sailed on that day.

The "Olive Moore" sailed on October 24th instead of the "Chelford" sailing on that day.

The "Chelford" sailed November 21st, I just had the names reversed in my depositions.

Cross-examination:

This lumber bought by Powell Company, Ltd. (half million feet) was export lumber. As far as I am personally concerned I
247 knew it was bought purely for export.

Mr. Walden had two months to make this delivery. As to whether I asked him to hurry his shipments along at that particular time for that particular ship I don't recall. The deliveries were all called for in September and October. Some of them were made in November. One boat did not sail until November. Before we got that loaded I believe I asked him to help get the shipments down as fast as possible. I was talking to him over the phone from my office at Sabine or in Beaumont, but as for any particular ship I could not say that I asked him to hurry the shipment for any particular ship, I just simply told him to hurry the shipments. That was because I needed the cargo to go into the ship that I had specifications for. I don't remember whether they were in Port or not, but I needed that particular lumber that was bought from the Sabine Tram Company to load for the ships. It was my intention to get it as fast as possible to prevent holding the ship longer than was necessary. As far as I know I have never known of a car of lumber shipped into Sabine for local consumption during the time we have been operating there. I did not see any. There was a mill down there that could have furnished them what they wanted. After this lumber reached Sabine, and after I paid the freight on it and surrendered the bill of lading I directed him to have it sent to the Southern Pacific slip on the S. P. track which is at slip 3 to be unloaded into that ship. The agent understood that before the freight was paid that I wanted it delivered there. So far as the agent knowing positively before the freight was paid that the lumber was to go down to this slip to be unloaded for abroad I couldn't say, but he did know definitely after I told him. All that character of lumber was unloaded into the slip before the freight was paid, no, not before. In this case in handling this shipment we were supposed to pay the
248 freight. They couldn't release the car, surrender it to us

unless we would surrender the bill of lading and pay the freight. In several instances I had to get the bills of lading down from Beaumont. In one case I believe, of two cars where they needed equipment, and the agent took it on himself, or somebody did, connected with the Railroad, to deliver it into the slip, but held it in-tact in the slip in the possession of the Railroad until

the freight was paid. On shipments preceding those on this contract, whenever we bought from the Sabine Tram Company f. o. b. cars at Sabine or Port Arthur I paid the freight and they refunded the money to us. That was just a general understanding. They either deducted it from the amount of the lumber or sent back the money. That was the general course of business in the same character of business that I handled. On lumber that was shipped f. o. b. to Port when it reached there we would pay the freight and then it was deducted from the price of lumber or bill of the seller for the amount of freight. I always used Mr. Powell's money in paying the freight. After we paid the freight and got the receipt there for it, called expense bills, I would send these expense bills to W. A. Powell Company, Ltd. at New Orleans, giving myself credit for the amount, and they collected through Powell's office from the Sabine Tram Company, I never collected from the Sabine Tram Company myself.

I would pay the freight out of Powell's money and render them the expense bills and then they would collect from the Sabine, Tram Co. Sometimes they bought lumber from the Sabine Tram Company f. o. b. mill.

"Q. In handling the shipments the service performed by the railroad company, the placing of them at the slips, unloading and getting them onto the ships, isn't it a fact that it was all just exactly handled in the same identical way, whether one man paid the freight or the other paid the freight? A. As far as us getting the lumber it was, except in this instance it was the shipper's order, notify bill of lading. If we set a car and there was a ship

249 waiting in the dock for it and that car was necessary to load her and dispatch her, get her away, we couldn't do that until the bill of lading was surrendered and the freight was paid on that car to the agent.

"Q. I am talking about the services performed by the Railroad Company, wasn't it the same service? A. Same service placing it there, after all the payments were paid, just exactly the same.

"Q. What the Railroad did in hauling and placing shipments at the slip was just exactly the same identical service whether the seller or buyer paid the freight? A. Yes, the purchaser always paid the freight, and it was the same service always in the same cases.

"Q. And outside of the question who paid the freight the service performed by the Railroad Company in handling the lumber, I mean the physical work, was identically the same in every case? A. In every case."

Unless we sent an inspector to the mill to inspect the lumber we always accepted mill inspection on the lumber. That was the general custom and understanding. I have been directly and indirectly engaged in exporting lumber for myself and other exporters since I was fifteen years old. I am 30 now, that is fifteen years I have been engaged in this business.

When we paid the freight on these cars to release them and get possession of the lumber then we had the refund coming to us on the freight. We would count the pieces and measure them to get

the gain in measurement, for there always is in that class of material a gain of measurement on which they were sold to us, allowing that everything was all right and up to classification: There is a classification that covers this stock that they have got to adhere too, and when it was up to that classification there is no question that they might make a clerical error in the billing which 250 we would catch up in our inspection, but it was only to determine whether they had reco-ned out the feet and things of that kind correctly; as to the classifications they knew what that was, and I will say that we accepted their classification. We made the measurement knowing there would be a gain in feet abroad in the measurement, and our inspection at Sabine was for ascertaining what this measurement was according to the foreign standard. It made a gain on the measurement by which it was sold to us. In other words we got paid for more feet abroad on the measurement they got from us, that they bought from us abroad, than we paid for here. In buying the stuff it is always understood that they have got to cut and give us a full foot and a full inch. A piece 12 x 12 and 20 feet long must be 12 inches square and 20 feet long. If it was $11\frac{1}{4}$ or $11\frac{3}{4}$ x $11\frac{1}{4}$ or $11\frac{3}{4}$ they have got to mark it 11 x 11 square, and if it is 20 feet 6 inches they have got to mark it 20 feet long and bill to us, sell it to us on that measurement. Now on the other side when it is a quarter of an inch scant we give away an eight- of an inch; where it was one quarter of an inch scant we take the inch, and on the other side it always works out in our favor, but the mill in cutting these things do not always cut them full inches to the thickness and length.

Down there at Sabine it is about three city blocks, may be a little more, maybe a little less, about that, along the switch of the main and switching tracks to the wharves and slips of the T. & N. O. where we discharged this lumber. Cars moving from the local station out to where the lumber was discharged, if you take it from the station itself, moved down the slip (down to the slip) it would have to be moved a little better than a quarter of a mile, about a half mile. This is not additional service if the stuff is intended for export, but it is that much more than has to be done with that delivered locally at Sabine. It is a fact that the free time allowed on car load shipments intended for export shipment is more liberal than that allowed for local delivery by reason of the fact that export 251 lumber often has to wait for the incoming and outgoing ships. The free time allowed by the railroad company on car load shipments for export shipment is seven days, while the free time allowed for local delivery is only 48 hours.

In paying freight, etc., there were no banks down there at Sabine and we couldn't pay it in checks, so we had to furnish the money and we had to get it from Beaumont. We never knew what we would need today or tomorrow and had to telephone about it. Mr. Horn was there constantly; would pay some freight for me, acting for me when I could not get there, but I always furnished him the money to pay these freights, and always left him more than he would require to pay a certain day and he would have some

surplus left. This was the general course of business in the payment of freight, and when I saw it was at the rate of six cents on this shipment I called Mr. Walden up and told him because I knew it would be up to him later on, he would have it to pay for, and it was his fight, he would have to know something about it. He told me to tender the four cents and if it was not accepted to pay the six cents under protest. In other words if the T. & N. O. Railroad demanded only four cents I would have paid it in the ordinary course of business, and probably would never have called Mr. Walden's attention to it. That was the extent of my relationship to the Sabine Tram Company in that particular, they never paid me anything for my services or anything of that sort. They knew I was acting for the W. A. Powell Company, Ltd.

In regard to prior purchases of W. A. Powell Company, Ltd., from the Sabine Tram Company referred to in my former testimony we had done quite a large business with them. All the stuff we ever bought we exported. Whether they knew it or not I don't know. The lumber varied as to classification and size, different grades of lumber. While we were in business and up to the time of this last purchase I couldn't say positively, but approximately as to that I should judge we had purchased about six or eight million feet from the Sabine Tram Company. From June, 252 July and August, 1904, up to April, 1907. All the previous shipments including this shipment purchased from the Sabine Tram Company moved by the various roads, either directly to Port Arthur over the Texarkana & Ft. Smith Railway or up to Beaumont over its line and thence over the T. & N. O. to Sabine or other lines if it went through other ports. I don't know whether this lumber covered by the contract now under consideration in this case was insured at the time it was in transit, or whether it was insured after it was loaded on the vessel. Whether they had an open policy covering that I couldn't say what the terms of the policy were. I know they had to insure the cargo after it was shipped on the vessel. I am sure they did not insure it from the point of origin to the port of transshipment; whether it was covered after it was taken into their possession at the port of transshipment while waiting for shipment or only from the time it was loaded onto the vessel I can't say, but I am sure it was not insured from the point of origin up to the port of transshipment.

Sabine is a port of transshipment. It was the port for transshipment for this particular lumber that is involved in this controversy.

I could not state very well how these cars arrived at Sabine as to the number of cars that arrived at any particular time, how many at one time, but I know while this shipment was moving in one particular instance I was anxious to get a few cars and I searched the whole country to get them and I found three of four tied up on the transfer out here, and finally got them switched over after two or three days' time to the T. & N. O. and then they brought them down there. As to the others, whether they came in without any interruption or not, come in on the time allotted to the car, within a reasonable time, I don't know. Sometimes the lumber

would arrive at Sabine one car at a time until there would be two or three or five. They would arrive several at a time anywhere from one to five cars arriving at the same time until the 33 arrived.

253 I could not state what the average length of time each car was in moving from Ruliff to Sabine station. I got the bills for the cars before they showed up at Sabine except in one or two instances when I did not. The cars were there and the bills had not reached me, and for that reason Mr. Walden agreed to let me have the bills of lading without forwarding to New Orleans in case such a matter happened again so that I would be able to get possession of the lumber. I think about four of five of the 33 cars I got the bills of lading direct without being first sent to New Orleans, that is, I got direct the bills of lading for four or five cars.

The classification of timber governing sawn timber is laid down by the Association of lumbermen, and sawn timber, and *sawn timber* is 30 cubic feet average, it is known in other mills as sawn timber, is known in the saw mills of Texas as 30 cubic feet average. We know it is export timber, and it is generally known and generally recognized by all lumbermen and manufacturers that what we call export timber is what is known as 30 cubic average.

I do not know where local lumber into Sabine was delivered because I never saw any delivered, never knew of any being shipped there for local delivery in car loads. I don't know of an instance of lumber being shipped to Sabine for local use in car load deliveries. There was no local freight of other character intended for the Sabine stores and residences delivered down to the docks and wharves where this lumber was. There was none that I ever saw.

Sometimes the freight on this lumber was paid by myself and sometimes it was paid through Mr. Horn at Sabine. Sometimes it arrived at Sabine maybe a car or two at a time, and sometimes a number of them arrived at the same time. Sometimes a number of bills of freight on the freight covering a number of cars were paid off or taken up at the same time. That is usual in every case, to take up more than one expense bill, and in all cases I think we took up quite a number of expense bills at each time because the

254 money was there in the hands of Mr. Horn and you might just as well say the T. & N. O. freight money was laid aside for this purpose and they knew it. He was always provided with the money and we did not make separate payments to cover each expense bill.

The reason I called up Mr. Walden was we had handled a whole lot of export lumber before and the export rate on export lumber theretofore had been four cents and when they demanded six and afterwards fifteen cents I called up Mr. Walden. What I understood and what my people understood was that the rate of four cents was the rate on export lumber. It was what I understood to be the export rate. I can't remember and don't know how long it was before I began to receive this sort of lumber involved in this suit since I had occasion to pay freight on other export lumber at Sabine. Don't know whether it was several months, or it might have been only a day or two. I cannot say whether we had paid

the four cent rate on export lumber at Sabine any time after August 6th, 1906, or not, I don't remember the date, but up to this shipment we had only paid four cents. I knew up to that time the export rate had been four cents. I never did know the local rate shipped on freight delivered locally at Sabine. I never inquired to find out. It is a fact that when I called up Mr. Walden and explained that they were demanding six cents he told me to tender the regular export rate of four cents, and if they demanded more than that to pay it to them under protest.

"Q. In that conversation about the same matter didn't he say that he understood the Railroad was trying to raise or increase the export rate, or the rate on export stuff, that he wanted it paid under protest, and to try and see if they couldn't defeat the export rate?

"A. It is a fact that I told Mr. Walden that the Railroad was doing that, he never asked me the question but I told him I thought so, I thought the Railroads were trying to do that, I didn't know of any other reason why they were trying to raise the rate.

255 "Q. What?

"A. On this export stuff.

"Q. And after you had that conversation with him about it didn't he say in effect that he was going to try to make the local Texas Commission rate apply, if they were going to raise the export rate?

"A. He did.

"Q. Previous to that time the regular export rate had been recognized and paid on all that going to Sabine?

"A. Yes.

I couldn't state whether on these shipments we ever used the whole seven days allowed on export shipment or not, I don't think we ever used the entire seven days, the expense bills will show that. I am pretty sure there never was any claim for demurrage against any of those cars. I know that as a rule after they reached Sabine they were given prompt service. The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff and were switched up to the wharves and slips without being unloaded at the local station, they were all unloaded at the slips, switched up there and unloaded there. I know that it was a continuous movement right through the local station at Sabine up to the part of transshipment.

By free time is meant the seven days, Sundays excluded; all cars if you are notified by the agent at station that such a car has arrived, and unless you unload it in seven days, Sundays intervening, you have to pay two or three dollars as the case may be, or one dollar a day for car service to the Car Service Association on export lumber. And if you get it unloaded within seven working days you do not have to pay any demurrage at all. But have to pay \$1.00 per day after seven days. On local shipments you are allowed only 48 hours after receiving notice. If this lumber had moved down to Sabine locally it would have to be unloaded there within forty eight hours. If it took any more time than that you would have to pay so much per day afterwards. That was the minimum free time, that was the minimum of free time.

256 It is a fact also that on all export stuff that if we unloaded it on the docks we had 30 days' free storage on the docks. Just about that time, or just prior to that time they made provisions for additional wharfage after 30 days, which had just gone into effect about that time. As to how about local shipments I never handled any and I don't know what the conditions were, except that I do know that after local shipments are unloaded into the freight depot, or onto the platform, the local platform, after 48 hours they are allowed to charge storage on it. The time allowed for free storage on export business is much greater than that allowed on the local business always. As I said before on one car on two occasions the cars got there before the bill of lading did, the bills of lading having been sent to New Orleans. That was only on one or two occasions. These bills of lading Mr. Walden knew nothing about, they were delayed in the office at New Orleans not being forwarded to me, and when I saw that the cars had arrived in this one instance only before I had got the bills of lading I asked Mr. Walden if he wouldn't let me have the bills of lading and send the draft separate, and he did. There was only one instance where the car beat the bill of lading to me. There might have been three cars in that shipment, but it was in that instance that I didn't get the bill of lading until after the cars arrived. This was just one time, whether it was one, two or three cars it was the one time that it occurred, then I communicated with Mr. Walden. It was only in one instance that the lumber coming in on the cars after the ship was in port, I remember that clearly it was a fact, that was only for one car that we held the shipment. The ship was waiting for lumber when that car got there, but it was not waiting for that particular car. The ship was waiting for the lumber; and that car got there and we unloaded it into the slip and measured it up found that it suited and loaded it into the ship. The reason I wanted Mr. Walden to send the bills of lading to me without sending through New Orleans, was because, I

257 wanted the lumber released and measured up to know how much I would have for a ship that was either there or coming. All these ships chartered by the W. A. Powell Company, Ltd., at the time operated in several ports. I could not say positively whether it is a fact that at the time of the purchases of this particular lumber we had ships chartered for that particular lumber. I knew when I got advice from New Orleans that I had shipments to make, but at the particular time when this contract was made there were several vessels that would come up to Sabine afterwards, but they had not determined at this time to send these shipments there, after the contract was made they did decide to send them there. Mr. Powell on the day he made these purchases said that he had some contract to meet but named no particular ship to me. I didn't know what particular ship would be sent. But this lumber was bought to help fill contracts that he already had made, and these contracts that he had already made was for sales abroad. The lumber was actually sent out from Sabine to fill these orders.

Redirect examination:

When a car of this lumber left Ruliff, was loaded there, possibly W. A. Powell Company, Ltd., didn't know that particular car was going to any particular ship or to any particular port, but I knew it as soon as I got the invoice, copy of which was always sent to me the same day the original was mailed to New Orleans. I knew what I was needing for vessels, knew what I required, and those invoices showed me what cars contained, and if tallied after the cars reached there and suited I applied them on the shipment. I knew what I wanted to put in and applied a great many such cars against my contracts I had mapped out. I had parcels to make up, and I always knew in advance what ship I was going to ship this stuff on, but W. A. Powell Company didn't know, but could have found out if they had wanted to. I know from the description of the stuff in the invoice, I didn't know when the car left Ruliff
 258 what ship it was going in to but when I got this invoice and looked at it and if tallied after it reached Sabine I knew what lumber would go. If the lumber tallied with the invoice I applied it to the contracts I had mapped out to apply it on and it would usually always tally, the invoice was always right and correct. We didn't have any reason to scrutinize this lumber after it came to Sabine because the stock was always good stock, much better than the specifications provided for. Mr. Faulkner my assistant, then measured it and took the actual measurements in the invoice to get the gain I have testified about. If we had found timber there not coming up to specifications or rotted sticks we would have made reclamation. As a matter of fact W. A. Powell did not have this stuff inspected at the mill, they accepted mill inspection.

I spoke about having before this time paid the four cent rate, that was payment made on lumber or stuff shipped from Ruliff to Sabine, and I called that the export rate. I don't know anything about whether it was the rate fixed by the Railroad Commission of Texas or the rate fixed by the Interstate Commerce Commission, but I have been told it was the rate fixed by the Interstate Commission. I also understood the Railroad State Commission of Texas are the people who made this rate. That was the rate I understood we were paying, and that we did pay on previous shipments from those points.

"Q. When you said it was the export rate you didn't mean to convey the idea that it was the rate fixed by the Interstate Commission?"

"A. I know nothing about that."

This stuff being switched from the depot down to the slips had to pass over switch tracks to the extent of a quarter or half a mile. There was no lumber in less than car load lot forwarded to Sabine Pass to my knowledge. Other freight of that character would be unloaded at the depot or at some switch track. If a man wanted he could have it placed on the track anywhere he wanted it.
 259 They did not have what is called a team track to my knowledge. They would accommodate you and put it where you

wanted it. I don't know of any freight of any character being shipped from points in the interior to a mill that was down there. But I know of a mill shipping some to Galveston to be exported. I saw the cars and inquired about them. They sent the cars down to that mill and loaded them and billed them out. I do not know whether they made any extra charge for that service, it was none of my business, I don't know. It is a good distance down to that mill, it is three miles. The tracks does not pass any nearer the slip than the main track.

In every instance we always paid the freight and surrendered the bill of lading before getting the cars with the exception of one time when two cars were unloaded when we didn't have the bill of lading. When we paid the freight and surrendered the bill of lading, a great many cases the cars would probably be standing down in the yard, any where from a mile to a mile and a half to two miles away. If we wanted them we had them sent up to the slip and paid the freight. They didn't have much to do when the cars arrived they would switch them to the slip, then when we paid the freight we could unload them promptly. Sometime they sent them where we wanted before we paid the freight, but they were not surrendered to our possession until the freight was paid.

I don't know for certain whether the expense bills were made out and dated when we paid the freight or not, the date of the expense bills do not always represent the date of payment of the freight, it represents the date of the arrival of the car, then the date ought to be given when we paid the freight. On the expense bills there are no memorandums to show when we paid the freight, just simply the receipt by J. L. McReynolds, agent. The date of the bill itself "Sabine Tram Company, Sabine, Texas, 9/15/06. Charges on articles *weigh* bills from Ruliff." I don't think the date

of expense bill represents practically the date of the payment. The *weigh* bill is dated 9/12, and it would have taken that time to get there, the 15th, and that is the date of the arrival of the car I believe. As I said before with the exception of one occasion I had the bills of lading on the arrival of the cars. Upon arrival of the cars the agent notified Mr. Horn or Mr. Faulkner, my inspector who had to measure the stuff, and he either notified Mr. Horn for the agent or the agent did, and Mr. Horn notified me. We did not have the money there to pay the freight always, we had to get the money down from here or Adams got it and paid it. I couldn't say what time the agent notified me before the payment would be made, I couldn't say because we used to pay for the cars as fast as we needed them, that was pretty regularly as a rule. We didn't always make payments promptly on the notice of the arrival of the cars. Not always, we had so many cars coming in we always let a number of cars come in say eight or twelve or fourteen and then paid for them and they would be sent to the slips, sent ready out to be unloaded as we were ready to pay for them and we went ahead and discharged them.

Sometimes there would elapse as much as two or three days after the arrival of these cars before the payments were made, and some-

times more days. As a rule we expected to pay the freight within the free time allowed, and if we didn't pay for them in that time we would pay the demurrage. I do not remember any demurrage being paid on these shipments. The payments were made within the free time. From the records in New Orleans I could give you the information as to the number of expense bills we took up at different times relating to these shipments but not from memory.

"Q. The question was asked you as to whether or not Mr. Walden in that conversation with you about this six cent rate didn't himself use the term "Export stuff" or "Export rate"; In your testimony did you mean to say that Mr. Walden in talking to you in this particular over the phone referred to this as "Export stuff" or referred to "Export rate"?

"A. I don't remember positively, he might just simply have said the rate should be four cents, he might have said an export
261 rate, but I understood him to say "not more than four cents, and if they wouldn't accept it to pay six cents under protest."

I had the talk with Mr. Walden before paying any of the freight bills. As I was paying the freight for the account of the Sabine Tram Company I called him up. Before I paid anything he told me to tender the four cents and if they wouldn't accept it to pay the six cents under protest. Then as to whether he stipulated that I was acting for the Sabine Tram Company in that particular instance I don't know. I knew as a general custom I was, but I remember a day after when I came to Beaumont I went up to see him to explain about that and when I did he told me I was acting for the Sabine Tram Company and I told him it was up to them, and he said "Yes," that it was an f. o. b. shipment and he knew it was; that it was to them to refund that money and up to me to attend to those freights as agent, his agent, and he said "Yes."

When he told me over the phone to pay these bills under protest I understood of course that it was for his account.

I do not know that the Railroad assigned any reason for calling for the six cents and changing to fifteen cents except that he, the agent, didn't know how to call my attention, and that the auditor at Houston had sent him a corrected receipt to collect nine cents more, which he presented me and I had to pay it to him, and then I told Mr. Walden about the fifteen cent rate that had been collected or the correction; in the meantime he directed me to pay it under protest. When they first began to collect the fifteen cents I took it up with Mr. Walden and he directed me to pay it under protest. I did know that this lumber was not inspected by W. A. Powell Company on its way to Ruliff or prior to its arrival at Sabine.

Cross-examination:

"Q. When this lumber was beginning to be put on the docks, beginning to arrive, do you remember being with W. A.
262 Powell in Mr. Atkinson's Office at Beaumont, or in Mr. Beard's office, the general freight agent of the Texas & New Orleans objected to the lumber being carried there on the docks

unless he saw policies of insurance, or was assured it was carried, that the insurance was carried on the lumber, and that Mr. Powell assured him with you all there together that this lumber was covered by blanket policy from point of origin, from Ruliff to destination?

"A. From the point of origin in that policy you will find shows from the point of trans-shipment, that the goods were protected, not from the point of origin-shipment as you contend, but after it was received and taken into possession by W. A. Powell Company at Sabine it was protected by open policy either in the Union Marine Insurance Company or some other Company, you can get the information from them. It wasn't protected while in the possession of the Railroad Company, but it was the moment it hit there.

"Q. Taken out in advance of its arrival by the time it hit there?

"A. Yes, it was protected by insurance but not until that time.

"Q. Protected by insurance it had been previously taken out before its arrival?

"A. Yes sir.

"Q. Blanket policy covered it until it reached destination in Europe?

"A. Yes sir.

"Q. I notice those bills there, every shipment, each car, bill for each car has a wharfage charge, that wharfage charge was on the bills when they were paid?

"A. Yes sir.

"Q. I understand in your deposition you said the protest you made wasn't against the wharfage, but against the freight rate only?

"A. No; I didn't protest against paying the wharfage for account of W. A. Powell Company because it was strictly our bill and was right and we had no protest coming.

"Q. That was a correct charge?

"A. That was a correct charge.

"Q. With the Sabine Tram Company they weren't chargeable with the wharfage under your contract with them?

263 "A. Yes sir, but the Railroad Company was entitled to collect wharfage when collecting freight, it certainly was.

"Q. Had that wharfage when each bill was paid, in each instance, had that wharfage accrued?

"A. Yes sir.

"Q. Then the stuff had reached the wharves?

"A. When I was presented with the expense bills it certainly had.

"Q. In each instance the lumber had been carried beyond the depot to the wharves?

"A. Yes.

"Q. At the time each one of those bills were paid there with the wharfage charge, or the bills themselves were taken up between you re-senting the Powell Company and the agent representing the T. & N. O. each knew that it was lumber that was going to be exported?

"A. We knew it was going to — exported, knew it was one of the cars in the slip.

"Q. Knew it was not going to be delivered locally?

"A. We knew that.

"Q. The agent knew that?

"A. I don't know about him.

"Q. He knew it was going over the wharf?

"A. I don't know about that sir, but he could have found out if he had asked me.

"Q. The wharfage on the bills indicate that?

"A. Yes, certainly because that charge only carries that.

"Q. Wharfage wouldn't be charged against stuff that was delivered locally in Sabine?

"A. Not that I know of, no sir.

"Q. In the answer to your 9th interrogatory you say; "All the lumber was unloaded and held at Sabine for period of from one to thirty days." You mean by that it was unloaded at the port of trans-shipment, not at the local station?

"A. At Sabine.

"Q. By the use of the word Sabine you don't mean the local station?

"A. No sir.

"Q. But you do mean the port of trans-shipment where it was delivered into the slips by the T. & N. O. Company?

"A. Yes, it was unloaded into the slips.

264 "Q. What is the slip, so it can be explained in the record?

"A. It is just a jog cut out into the land of so many feet wide and so many feet deep to allow a ship to enter.

"Q. The water comes up into this slip and you unload the lumber directly from the car into this slip?

"A. Yes.

"Q. And the water?

"A. The water of that slip.

"Q. And the ship takes it out of there with their tackle?

"A. Yes sir.

"Q. So that when you say it was unloaded and held at Sabine you mean it was unloaded at the slip and held in the slip awaiting the vessel?

"A. Yes sir.

"Q. You don't mean that the lumber was held, when you say that the lumber was held in stock, you mean it was just held in the water there awaiting the ship on which you intended to ship it to your customer in Europe?

"A. Yes."

When these shipments arrived there was no T. & N. O. local switch engine there, such cars as were released could be switched by the train pulling the cars down there, on to the switches and out to the port, but if they were not released they *were* be set down in the yard some where and left to stand there until they were released. In some instances they may have switched these cars out onto the siding

to be unloaded but it was never unloaded except as I tell you in one case when the cars were put in there and held until the bill of lading were surrendered.

The train pulling the cars in there didn't always back them to the slip, they were set down in the yard and held sometimes.

Redirect examination :

When the cars came in on the train they were quite frequently sent on down to the slips even if the car was not released. The track was open, that is, if there were no empties or loads in there to prevent them in their work, they just simply set in the car, they set them in when they could. None of the cars were discharged until they were paid off except three cars I think, and they were held. By discharged I mean unloaded. This inspection I have spoken of covered all the lumber that Powell might have delivered at Sabine. I don't know how long our ships were there usually in being loaded, the "Chelford," the "Olive Moore" and the "Manchuria" but the average time would have been about 12 to 16 days each in being loaded. The cars were shipped down the track from the station to the slip, or switched from certain switch tracks to the slip upon my orders or the orders of Mr. Faulkner representing the Powell Company, Ltd.

J. J. ARTHUR, sworn on behalf of the plaintiff testified;

Direct examination :

I am an employé of the Railroad Commission of Texas. I am Chief rate clerk and my duties are construing the rules of the Commission and the tariff, and furnishing such information as to enable the Commission to act from a rate standpoint, the three Commissioners themselves not being rate men. I am Chief Rate Clerk. I have had experience in that position for eight years. In that line of business it is necessary for me to study the various rates and apply them in Texas and the Railroads and the regulations of the Commission. I do not know the exact date when the road from Sabine to Beaumont became a part of the Texas & New Orleans Railroad Company. I identify this as the annual report of the Railroad Commission for the year 1906, including tariff up to October 31st, 1906. (Referring to printed report of the Commissioners' Annual report.)

Agreement: It was agreed that the agreements and stipulations set forth in the letter of October 25th 1900 to the firm of Greer, Minor and Miller sent by Hiram Glass may be considered as the agreement of the parties under the subject referred to in the letter. (Copy of this letter will be found attached hereto marked exhibit P47 and made a part hereof.)

Plaintiff then read in evidence from page 184 of the Railroad Commission's report of 1906, the following;

266 "Effective August 13th 1900. (Circular No. 1169) Rates for the transportation of lumber and Article- taking lumber rates in carloads, from points on the Texarkana & Ft. Smith

Railroad Company north of Beaumont to the Sabine River to points specified below, to Beaumont, Port Arthur, Sabine Pass, four (4) cents per 100 pounds."

Plaintiff then offered in evidence copy of circular No. 1169 issued by the Railroad Commission of Texas and effective August 13th 1900 same being exhibit 48 which is as follows;

"Office of Railroad Commission of Texas. Circular No. 1169. Rates on lumber from milling points on the Southern Division of the Texarkana & Ft. Smith Railway. General notice circular No. 1160."

Hearing July 21, 1900.

AUSTIN, TEXAS, July 23, 1900.

It is hereby ordered that the following rates be adopted for the transportation of lumber and Articles taking lumber rates in carloads, minimum rate 24,000 pounds per car from points on the Texarkana & Ft. Smith Railway north of Beaumont to the Sabine river to points specified below:

Rates.

To Beaumont, Port Arthur, Sabine Pass, four (4) cents per one hundred pounds; to stations south of Houston on the Gulf Colorado & Santa Fe Railway, and the Galveston, Houston & Henderson Railroad and the Galveston, Houston & Northern except Galveston and eight and three fourths ($8\frac{3}{4}$) per 100 pounds. To all stations on the Missouri, Kansas & Texas Railway of Texas (except Trinity & Sabine branch) same rates apply from Beaumont to such stations. This order shall take effect August 13th, 1900.

JOHN H. REAGAN, *Chairman*;
ALLISON MAYFIELD,
Commissioners.

Attest:

E. R. McLEAN, *Secretary.*

I hereby certify that the above is a true and correct copy of Circular No. 1169, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 23rd day of July 1900.

E. R. McLEAN, *Secretary.*

Plaintiff stated that he introduced it simply for the purpose of showing the rate from Ruliff to Beaumont, and it was admitted over defendants' objection.

Plaintiff: Next read in evidence from page 65 of the Railroad Commission report for the year 1906, as follows:

"Appendix A."

Showing all Tariffs made by the Commission in the Form in which at the date of this Report they exist, all matter altered or supplanted by amendment having been eliminated.

General Rules Governing the Application of All rates.

2.

The rate between two given points shall not in any case, exceed the sum of rates applying between such given points and a point intermediate."

Plaintiff next offered in evidence the authorities Nos. 76, 80, 102 and 118 as shown on page 188 of the Railroad Commission's report of 1906, as follows;

"Effective May 1st and August 1 1902 and September 1, 1903, and January 13, 1904. (Authorities Nos. 76, 80, 102 and 118) Rates, in cents per 100 pounds to apply on pine lumber and articles taking pine lumber rates between points on the Texas & New Orleans Railroad, Stilson and east, also Turney and south.

Distances, miles.	Rates.	Distances, miles.	Rates.
10 and less	3.5	74 and over 51	6
15 and over 10	4	101 and over 74	7.5
30 and over 15	4.5	180 and over 101	8
51 and over 30	5		

Exceptions; 1. The following rates shall apply to Sabine and Sabine Pass;

(Rates to or from intermediate points not to be affected.)

From Beaumont	2.5
From Orange	3
From Stations north of Beaumont to Rockland, inclusive....	3.5
From Stations west of Beaumont except Houston.....	4
From Stations North of Rockland to Nacogdoches, inclusive...	6"

Plaintiff next offered in evidence copy of application signed
 268 by C. K. Dunlap, dated April 5th 1902, which is admitted
 by the Court over defendants' objection marked Plaintiff's
 exhibit No. 49 which is as follows;

Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Louisiana Western Extension Railroad Company.

C. K. Dunlap, General Freight Agent.

H. C. Reese, Ass't Gen'l Freight Agent.

HOUSTON, TEXAS, *April 5, 1902.*

Mr. John H. Reagan, Chairman R. R. Commission, Austin, Texas.

DEAR SIR: It is my desire to make re-adjustment of rates on lumber between T. & N. O. R. R. stations (within the lumber-producing district) to the following figures, viz: For distances

10 miles and less.....	3½¢
Over 10 to 15 miles	4
Over 15 to 30	4½¢
Over 30 to 51	5¢
Over 51 to 74	6¢
Over 74 to 101	7½¢
Over 101 to 180 miles.....	8¢

You will note by reference to current tariff this will, in some cases, increase and in some cases reduce the present rates, and as the scale is lower than is being applied by other lines in that territory trust you will authorize. It is also my desire to make exception to application of these rates to Sabine and Sabine Pass, rates to those points being necessary to meet water competition and accommodate export trade.

The lumber district embraces all stations on T. & N. O. main line, Stilson and east and Sabine division north as far as Mahl, Texas.

Yours truly,

C. K. DUNLAP.
B.

269 I, E. R. McLean, Secretary of the Railroad Commission of Texas do hereby certify that the above is a true and correct copy of a letter addressed to Mr. John H. Reagan, Chairman R. R. Commission, Austin, Texas, of date April 5th 1902, signed C. K. Dunlap and now on file in this office.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 22nd day of October 1907.

E. R. McLEAN,
Secretary Railroad Commission of Texas.

WITNESS: C. K. Dunlap was, according to my recollection, General Freight Agent of the T. & N. O. Railroad Company at the time that application is dated. He is now traffic manager, but just when the change occurred I don't know. On April 15th 1902 he was General Freight Agent.

In connection with authorities numbers 76, 80, 102 and 118 in the Appendix to the Texas Railroad Commission report in the year

1906, the term "Authority" is used instead of "Circular" or "Tariff" because it is a special document and doesn't amend a general tariff or contain a general order for application by all railroads. There are some circulars we give the term "Circular" to them instead of "Authority" and are in response to applications. Those circulars are issued for those. The general rule is to give an authority number, we have a separate record for authorities to those of applications, but an application when made by a railroad for a certain rate the term used to designate that rate while fixed is generally "Authority," but if it is for general application or to amend a fixed tariff we give it a circular number, but if it is a specific rate in itself the general rule is to designate, determine it an authority giving its numbers.

Plaintiff next offered in that connection the heading on page 187 of the Annual Report of the Texas Railroad Commission for the year 1906 under which this authority No. 76 occurs, which is as follows:

270 Texas & New Orleans Railroad and Galveston, Harrisburg & San Antonio Railway—Local.

Effective May 4, 1896. (G., H. & S. A. Ry. Authority No. 26) Rates in cents per one hundred pounds, for the transportation of ash and cotton, wood lumber, in carloads, from Wharton to points named below.

Houston	7½
Galveston	8¾

Effective July 25, 1895. (G., H. & N. Authority No. 3.) Rate of 5 cents per 100 pounds for the transportation of lumber, lath and shingles, in carloads, between Houston and all points on the Galveston, Harrisburg and San Antonio Railway, Galveston division.

Effective September 11, 1899. (Texas Trunk Authority No. 6.) Rates, in cents per 100 pounds, for transportation of oak, cross ties, in carloads, between points on the Texas & New Orleans Railroad (former T. T. Line).

Distances, miles.	Rates.	Distances, miles.	Rates.
10 and less	3¼	70 and over 50	3
20 and over 10	4	100 and over 70	7
50 and over 20	5		

Effective November 10, 1899. (Texas Trunk Authority No. 7) Rates in cents per 100 pounds, for the transportation of oak lumber in carloads, between points on the Texas & New Orleans Railroad (former T. T. line). (Circular No. 2417 applied.)

Plaintiff next offered in evidence the heading occurring on page 65 of the 15th Annual Report of the Railroad Commission of the State of Texas, this heading being as follows;

APPENDIX A.

- 271 Showing All Tariffs Made by the Commission in the Form in which, at the Date of This Report, They Existed, All Matter Altered or Supplanted by Amendment Having Been Eliminated.

General Rules Governing the Application of All Rates.

2.

The rate between two given points shall not, in any case, exceed the sum of the rates applying between such given points and a point intermediate."

Plaintiff rested.

F. J. BEARD, being sworn for the defendant testified as follows:

Direct examination:

Defendant offered in evidence identified by this witness, all of the original way bills covering the shipments described in plaintiff's petition, and the subject of this suit, marked Exhibit No. 1. The original way bills so introduced being hereto attached marked as aforesaid.

The witness testified that the original way bills so introduced were the original way bills upon which each of the shipments mentioned in Plaintiff's petition moved.

Defendant next offered in evidence certified copy of the Interstate Commerce Commission of that portion of Supplement No. 1 to joint lumber tariff Sunset route (Galveston, Harrisburg and San Antonio Railway, T. & N. O. R. R.) No. 28H (Supplement No. 10 to I. C. C. No. 551) etc. marked "Defendants' Exhibit No. 2" the same being as follows:

"Interstate Commerce Commission."

Washington.

Secretary's Office.

I, Edward A. Mosely, Secretary of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a correct statement of rates, and regulations governing same,
272 shown in schedule more particularly therein described, filed with the said Interstate Commerce Commission on July 28, 1906.

In witness whereof I have hereunto set my hand and affixed the seal of the said Commission this 17th day of October, A. D. 1907.

[SEAL.]

EDW. A. MOSELEY,

Secretary of the Interstate Commerce Commission.

"Extract from Supplement No. 1, Joint Lumber Tariff, Sunset Route (The Galveston, Harrisburg & San Antonio Ry., Texas & New Orleans Railroad), No. 28-H (Supplement No. 10 to I. C. C. No. 551), Effective (Except as Noted) Advances, August 6, 1906, Reductions, July 30, 1906.

Miscellaneous Rates (Page 7).

Item No.	Commodity.	From—	To—	Rate.
181 cancels 92 and 142.	Lumber and articles taking same rates, carloads, minimum weight 40,000 lbs.	Orange, Tex.		5
		Beaumont, Tex.	Sabine Pass, Tex.	5
		T. & N. O. stations, Rockland and south, also west of Beaumont, except Houston.	Sabine.....Tex. Port Arthur, " Export other than Mexico.	6 6
		T. & N. O. stations north of Rockland to Nacogdoches, incl.....		7 1/2
182 cancels 102.	Lumber, etc., carloads.	K. C. S. Ry. points.	Sabine, Tex. (For export)	Cancel rates. Combination of locals to apply.

Shipments destined either port for local delivery and consumption regular tariff rate will apply, but if switched to docks, wharves or slips for export other than Mexico or United States coastwise, moving beyond the State of Texas, above proportional rates will apply."

In this connection Defendant offered parts of the same amendment being the printed copy of same, Amendment No. 10 to I. C. C. No. 551 as filed with the Interstate Commerce Commission, which it was agreed was filed with the Interstate Commerce Commission agreeable to law at the time of this transaction under investigation occurred. The part of said Amended tariff here offered in evidence being that part of item 183 of said Amendment which is hereto attached 273 and marked Defendants' exhibit No. 3, which provided that the rates on lumber in carload lots for Texarkana & Ft. Smith Railway points, from points from Beaumont to Sabine river inclusive to Sabine, Texas, effective August 6th, 1906, should not be as theretofore, but that "Rates named in item 101 will not apply on export or coast wise traffic."

The witness then on request turned to Original I. C. C. No. 551 and found item 101, which was cancelled by the foregoing.

Defendant then offered in evidence that part of Interstate Commerce Tariff No. 551 Joint Lumber Tariff which became effective May 7th, 1906, which is referred to as being item No. 101 that was cancelled by Amendment of August 6th. That item 101 providing that lumber in carload lots Texarkana & Ft. Smith Railway points, Beaumont to Sabine river inclusive to Sabine, Texas, not applied to intermediate points, four cents."

In this connection at plaintiff's request defendants stated that this tariff was filed by the Galveston, Harrisburg & San Antonio Ry. Co. and the Texas & New Orleans Railroad Company, but was not filed by the Texarkana & Ft. Smith Railway Company, but under the provisions of the Interstate Commerce Law it went into effect in the regular and legal manner prescribed in the Interstate Commerce law.

The item was here offered in evidence and read as follows, to-wit: "Lumber etc. car loads, Texarkana & Ft. Smith Railway points, Beaumont to Sabine river inclusive, Sabine, Texas, not applied to any intermediate point, four cents."

Defendant offered in connection with that that part of the written agreement filed in the case made between Plaintiff and Defendant being as follows: "It is agreed by and between the parties to this cause as follows: (1) That the hereto attached "Joint Lumber Tariff Sunset Route I. C. C. No. 551" was filed with the Interstate Commerce Commission on, to-wit, April 27th, 1906, to take effect May 7th, 1906.

(2) That the hereto attached Supplement No. 10" to "I. C. C. No. 551" was filed with the Interstate Commerce Commission, on, to-wit, July 26th, 1906.

274 The agreement in this paragraph however, is subject to this condition, to-wit: that if the plaintiff ascertains that its agreement to this fact is erroneous Plaintiff shall have the right to withdraw same, but in such case the defendants may offer a witness to testify and identify the same, whose testimony in regard to said supplement shall not be subject to the objection that the defendant have not offered the best evidence.

It is understood however, that the plaintiff does not by this agreement admit that the evidence is relevant or material, which objections the plaintiff reserves the right to urge.

(3) It is further agreed and admitted that the Railroad Commission of Texas authorized or established and promulgated "Corrected Authority No. 76 hereto attached; the following general rule shown in item "2" page 3 "Circular No. 766" issued by the Commission:

"2. The rate between two given points shall not in any case exceed the sum of the rates applying between such points and a point intermediate."

And Circular No. 1169 hereto attached; as to all of which the respective railroad companies affected thereby received the notice prescribed in Art. 4563 and the classification or schedule provided for in Article 4567 of the Revised Statutes of the State of Texas.

It is understood that the defendants do not intend hereby to waive any objections they may see fit to urge as to the relevancy or ma-

teriality of said rates and rule referred to above as being prescribed by the Railroad Commission of Texas.

October 16 A. D. 1907.

GREER, MINOR & MILLER,
Attorneys for Sabine Tram Company.
PARKER & HEFNER,
Attorneys for T. & N. O. Railroad Co.

Attorneys for Texarkana & Ft. Smith Railroad Company.

275 In connection with the part offered heretofore we offer the entire heading and first page of I. C. C. No. 551 and Supplement No. 10 to I. C. C. No. 551, a copy of which will be found hereto attached.

Mr. Beard the witness on the stand who testified he was the General Freight Agent of the Texas & New Orleans Railroad Company continued his testimony as follows:

I instructed these shipments to be handled under the tariff just introduced in evidence, carrying a rate of 5 cents to the Texas & New Orleans Railroad Company for the haul from Beaumont to Sabine, and a rate of ten cents to the Texarkana & Ft. Smith Railway for carriage from Ruliff to Beaumont, ten cents per hundred. I had advice from the General freight agent of the Texarkana & Ft. Smith Railway Company that ten cents per hundred pounds would be their charge from Ruliff to Beaumont on that character of business, that was their rate. This business was handled by the Railroad Company, treated by the Railroad Company as foreign business, and not intrastate business. We treated it as a foreign shipment and so considered it. I was satisfied that it was a foreign shipment. I was at the time the General Freight Agent of the Texas & New Orleans Railroad Company, that is at the time all these shipments in question were handled. I had no official connection with the Texarkana & Ft. Smith Railway Company. I did not act for any one in connection with these shipments except the Texas & New Orleans Railroad Company, other than carrying out the instructions of the Texarkana & Ft. Smith Railway Company. The rate I caused to be applied in behalf of the Texas & New Orleans Railroad was the interstate commerce rate provided in interstate commerce tariff, item 181 in Supplement No. 10 to I. C. C. No. 551, effective August 6th, 1906. Prior to August 6th, 1906, we had no interstate commerce rate published applicable to export shipments from Beaumont to Sabine, but we did have prior to August 6th, 1906, an interstate commerce rate on through shipments from Texarkana & Ft.

276 Smith points to Sabine for export as published in I. C. C. No. 551 under which a rate applicable on these shipments from Ruliff to Sabine for export was four cents, that was the export rate from Ruliff to Sabine as shown by the Interstate Commission Tariff up to August 6th, 1906; on that date it was cancelled by Supplement No. 10 heretofore referred to, Supplement No. 10 to I. C. C. No. 551. As stated before I believed these shipments to be shipments coming properly under the designation of foreign shipments. At the time

of the shipments in question I carefully considered the matter, and had previously taken advice and had experience with similar questions with regard to determining whether the shipments of this character from points in Texas to Sabine and unloaded at the docks, slips or wharves were foreign or intrastate shipments, and I had taken legal advice on the matter, and had taken legal advice that I believe to be as good legal advice as you could get. After taking such legal advice on these shipments I was advised that they were foreign shipments and not local or intrastate shipments. Such was the advice of our counsel and I have never been advised to the contrary by our counsel.

I know it is a fact that other Railroad Companies filed with the Interstate Commerce Commission export tariffs upon commerce within a state going to a port of trans-shipment within the same state. I know that those tariffs are filed with the Interstate Commerce Commission and published according to the Interstate Commerce Law. I have copies of some here that could be offered which bear I. C. C. numbers which would indicate that they had been properly filed. I was aware of this general practice at the time we put in these rates which were applied to the shipments here in question; under the construction of the law as I understood it I believed it to be my duty to file and publish this rate in question here and adhere to it when published. It is the interstate Commerce rate. These shipments in controversy moved under the regular filed and published tariffs that I have already identified and which have been introduced in evidence. It is a fact that I have been advised
277 of this controversy. It is a fact that I had, prior to the arising of this controversy and prior to the application of the Interstate Tariff to this freight movement, had personally had up the matter of export tariff with the Interstate Commerce Commission in which the Commission claimed jurisdiction over such a movement.

In the town of Sabine I suppose is about fifty people. The wharves, docks and slips of the T. & N. O. R. R. Company at Sabine are about a third of a mile from the local station at Sabine, somewhere from a third of a mile to a half a mile, that is, track mileage. The custom house records show that for the year 1905 there was exported through the Port of Sabine fourteen million, six hundred and sixty seven thousand six hundred and seventy seven feet of lumber; for the year 1906 thirty nine million five hundred and fifty four thousand and twenty five feet of lumber; that is a total of fifty four million feet for the two years 1905 and 1906. I don't think they have ever used a car of lumber in a year at the town of Sabine locally.

I heard the statement of the witness Mr. Flanagan as to free time allowed applying to local shipments and export shipment. The statements of the witness Flannagan as to free time allowed were correct. 168 hours on this export stuff, we gave them the export time on it. That was the rule applied to these particular shipments in controversy in this suit. It was under my instructions it was carried out. I do not know of my own knowledge how long

any car was on the track. All I know is what was reported to me. The rule that was applied to these particular shipments in controversy was, that we gave them 168 hours free time in which to unload before demurrage would accrue, which was the free time allowed on export shipments. We have no locomotive stationed at Sabine, and did not have any stationed there to switch cars at the time these shipments were handled, or to take cars from local station down to the docks and wharves. There was no switch engine there at that time, so that when the cars of lumber were brought in by a train the locomotive of the train that brought them in was attached and the cars pulled and shoved down to the wharf by our regular train locomotive.

Defendant here offered a blue print which is marked Exhibit No. 3 and hereto attached. The witness then proceeded to explain the location of the depot tracks etc. and in response to questions pointed them out on the blue print as follows:

Here is the local station marked on the blue print F. & P. Depot; and here is the house track on which the local business is usually handled marked in yellow; that is Sabine station proper. That is the local track proper for the local delivery of local freight, and here are the docks and slips down at the bottom of the map where the main switch is leading to them. They can bring the cars down either one of these two ways. That is, on the east leg of the "Y" or the west leg. The tracks used exclusively for local freight is yellow. The map is drawn to scale, one inch to the 100 feet. A train pulling into Sabine, a freight train, and stopping at the depot to unload local freight would stop on one of the tracks marked in yellow. If there was any of this freight in the train intended to go to the wharf for export they would not pass the wharf in going to that station, but after reaching the station where local freight is unloaded it would have to go beyond that; they would have to make a special trip any where from a third to half a mile to beyond where the local freight was delivered to get to the wharves and docks. They would have to go that far and return that far to get to where the local train was. They generally go ahead down the main track and back into the slips and docks here, That is for convenience in switching. They do not use these main tracks west of Sabine depot much. The scale on the map will show the exact distance, the extra distance that the car would have to go in order to lead up to the slip, but supposing it to be half a mile, in setting the cars up at the docks the train would have to go up to the docks and back, travel an extra mile in setting the cars there half a mile there and half a mile back, making an extra mile in setting the cars there that they would have to travel. They would first have to go half a mile and set the car at the docks, come back and then go back after the empty car, or an extra mile beyond the station in order to get the empty car, making two miles extra service in setting the car in and getting it away.

Cross-examination:

In doing switching down there they usually go as I have indicated. I do not know of my own personal knowledge how they handled these cars in this particular shipment. The cars could be switched over any of the tracks leading to the slips if they were in physical condition, that is, good shape, but I have never seen them switched in there from the track leading into the main track west of the Sabine depot. I don't know whether that track was in good condition in 1906 or not. The map shows the distances of the difference tracks. It would be nearer from the depot to the slips by going back and taking the spur track leading off from the main line to the west of the Sabine depot than going down that spur track east of the depot. I don't know where the yard limit at Sabine was, if they had any, the map does not show that. The yard limit usually includes the switch tracks. As a rule when a road carries freight to the station they will carry that freight without any switching charge to a point within the yard limit, that is, to the warehouse, team tracks and house track. As to how far the yard limits extend that is a pretty hard question, they often extend very far; we wouldn't deliver a car right at the end of the yard limit that wouldn't be considered acceptable. The extra service necessary for taking these cars down from the local station down to the slips, extra time allowed for unloading is of value to the railroad company, just how much is hard to determine, it de-

280 pends on how long the car is held. When the cars are held for several days, say for five days, I know a time when cars are worth \$20.00 per day to us it has been in the past when it would be worth \$100.00, but without taking an extreme illustration like the congestion sometime back but in ordinary times, switching service I suppose would be about \$5.00 a car, that would be reasonable, but there is no money in that for the Railroad Company.

The reasonable use for the cars per day according to a statement we had made up for all the Sunset lines showed that each car that we handled for six months was worth \$2.73 that was for each car on the line including those in bad order that we didn't earn anything on.

When this freight was collected, when I directed it to be collected on the shipments involved in this suit, I was advised that the Sabine Tram Company had agreed with Powell to pay the freight, and that an effort would be made to break down the Interstate rate and to enforce the State rate. I didn't know about the agreement between the Sabine Tram Company and Mr. Powell, but I looked on the business as Powell's business. It is a fact that shipments to shipper's order like this was, one man shipping stuff to himself notify another person was a common ordinary way of making shipments so as to collect the price of the commodity before the stuff was delivered, that is, I imagine that is the reason they make shipments that way.

It is understood by Railroad men and the patrons of Railroads and by the general custom it is understood where shipments are made to shipper's order notify John Jones that it is done to

protect the shipper, and it secured delivery to John Jones of the freight only on the delivery of bill of lading by him. It indicates that John Jones is entitled to the freight, that the property is his after he presents the bill of lading, because he can demand the freight under that bill of lading.

281 Shipments of this kind made to Sabine Tram Company by itself, Notify W. A. Powell Company, Ltd. they show on their face that the stuff was shipped to W. A. Powell Company, Ltd.

In the case of the shipments in controversy the Sabine Tram Company shipped to themselves notify W. A. Powell Company, Ltd. that shows that W. A. Powell Company, Ltd. owned this commodity as soon as they paid for and produced the bill of lading. That was the general way, the general custom of making these shipments.

(The witness here was shown the telegram and correspondence passing between himself and the general freight agent of the Texarkana & Ft. Smith Railway Company, which was introduced by Counsel for that Company, and at his request identified same. (These letters and telegrams hereafter introduced.)

Witness continued as follows: I know where the Texarkana & Ft. Smith Railway is, and where the Kansas City Southern Railroad is located. I have traveled over them. They constitute a continuous line from Kansas City to Port Arthur. Part that is in Texas is known as the Texarkana & Ft. Smith Railway Company; that part of the line outside of the State is called the Kansas City Southern, generally called the K. C. S. The whole road from Kansas City to Port Arthur is generally known as the Kansas City Southern, that is what we call it.

In making up a tariff if we refer to the Kansas City Southern Railway we would consider it took in the Texarkana & Ft. Smith Railroad. It is a common understanding and common expression among the Railroad people, the public generally, that the term Kansas City Southern includes the Texarkana & Ft. Smith just like the Texas lines are included by the Southern Pacific.

Cross-examination:

I am General Freight Agent of the Texas & New Orleans Railroad Company, and was in 1906. When any rates were filed in the Interstate Commerce Commission I participated in getting up those rates. I was necessarily a party to those rates, that was my business. I also participated in filing the Supplement referred to here, Supplement No. 10 to I. C. C. No. 551, the roads made parties to it in the first place. I could tell from the inspection of this Supplement who actually participated in getting it up and filing it. When it was filed I did not sign it as General Freight Agent of the T. & N. O. Company, I didn't have to sign it at all, simply prepared the proof for the printer. I did not sign the document filed with the Interstate Commerce Commission simply sent them the tariff. They would know it was the tariff of the T. & N. O. Railroad or some other road because it shows who

it was filed by, the I. C. C. number shows that. I. C. C. number is a Sunset route tariff including the T. & N. O., we are under the same number for convenience. Including the T. & N. O. the H. & T. C. the Houston & Shreveport, the Galveston, Harrisburg and San Antonio Railroad, we are all in that tariff for convenience. The roads we make parties to I. C. C. No. 551 participate in it. They did not sign it, no one signed it, the tariff shows for itself. The document filed with the Interstate Commerce Commission was not signed, just went up there in printed form like it is introduced here without any one's signature. The Interstate Commerce Commission takes it for granted that it is an authentic document without anyone signing it as the line issuing it is responsible for it. The tariffs only have to bear the initials of whom they are filed by, I mean to say that those 30 or 40 Railroads whose names appear on the first page of I. C. C. Supplement No. 10 I. C. C. No. 551, participated in that Supplement. Where the rates apply over their lines we make them parties to it. They are made parties to the tariff by implied consent, not specific. We do not handle the business that way now in fixing Interstate rates, we now have to file a concurrence, but at the time these tariffs were filed we did not have a file concurrence on the part of the other roads made parties to the tariff. At the time these tariffs were filed
 283 we could just file a rate, and make the other roads parties to it without them having anything to say about it, but when they got copies of the tariffs if they objected to them they could be eliminated from them, but they would impliedly consent to the tariffs unless they objected to it.

"Q. I notice that the name of the Texarkana & Ft. Smith Railway Company appears here, I want to know what there is in that Supplement No. 10 that fixes the rate on the Texarkana & Ft. Smith?

"A. Carries rates from that line to points on our line that is, where their interest appears.

"Q. Point out the rates on lumber from points on the Texarkana & Ft. Smith lines to any point on your line?

"A. From what period, when?

"Q. As fixed by No. 10 Supplement which you hold in your hand?

"A. It is sum of the locals, the rate from Ruliff to Beaumont, and from Beaumont to Sabine, it is the sum of the two rates.

"Q. Where is that?

"A. Supplement No. 10, here it is marked 'Cancelled rate, Combination of locals to apply.'

"Q. What does that mean, local as fixed by the Railroad Commission, or the local as fixed by the published rate with the Interstate Commerce Commission?

"A. Depends on the business, if it is State business the Texas Local applies, if it is Interstate the Interstate rate applies."

I haven't in this I. C. C. number 551 the local rate from Ruliff to Beaumont, I didn't have the tariff showing the rate when these shipments began to move, I wired to them, that is the Texarkana

& Ft. Smith Railway, to ask them what the rate was. I have, however, a through rate of four cents, from Ruliff to Sabine as applying prior to the filing of Supplement No. 10. That is an I. C. C. number 551, Item 101. In filing this Supplement No. 10 making a five cent rate from Beaumont to Sabine on export business, we cancelled that four cent rate which formerly had been agreed to and included in I. C. C. No. 551. We couldn't very well have a five cent rate and charge a four cent rate all the way through, 284 that necessarily would cancel it. I haven't with me any papers applying on Interstate shipments from Ruliff to Beaumont, any tariffs with me applying on Interstate or foreign shipments from Ruliff to Beaumont. I didn't know what that rate was on this export business, that is why I took it up with them. In some of the expense bills rendered covering these shipments were showing six cents per hundred pounds, covering a number of days before there was any change, will say I don't know that was, I don't know where he got that from. The export rates were effective August 6th, 1906, these shipments didn't begin to move until sometime in September. At that time this Supplement No. 10 under which we fixed this five cent rate was in force, and we gave 30 days' notice in advance of that to the mill people. It was in effect when these shipments began to move and we claimed five cents for our part. I didn't arrive at any six cent rate, the agent arrived at that, I don't know of any special reason for it. The auditor corrected it. When the auditor revised the billing he corrected it up to the proper rate. I did not notify the agent anything in regard to the rate until the Texarkana & Ft. Smith Railway advised me that their proportion would be ten cents, then we promptly advised the agent at Sabine that the rate would be fifteen cents. I expect it is true that no one connected with the T. & N. O. made complaint about the six cents collected by the agent, I never corrected it, made no effort to correct it until the Texarkana & Ft. Smith Railway Company demanded ten cents for the haul from Ruliff to Beaumont. As stated, I had heard that this interstate rate was going to be contested, that there was going to be an effort to apply the State rate of four cents. I heard that Mr. Walden was going to try it in the interest of the Sabine Tram Company. I can't tell you just when I heard that, but my authority is Mr. C. S. Flannagan. I cannot tell you whether I heard that before we began demanding the fifteen cents rate and six cent rate or not. It is not true that as soon as these protests began 285 to be made that I connected the Sabine Tram Company with those protests, or knew that they were going to protest it. It was just hearsay on my part as to what Mr. Walden intended to do, but Mr. Flannagan just told me what Mr. Walden said, I knew that when we were collecting this fifteen cent rate on the shipments, I knew that from hearsay that the lumber in question had been sold by the Sabine Tram Company for Sabine delivery, and that the Sabine Tram Company were credited the freight in the trade. The fact that the lumber was sold at Sabine delivery indicated that the Sabine Tram Company was responsible

for the freight, and therefore I connected these protests with Mr. Walden of the Sabine Tram Company.

The switching rate in Texas for the movement of cars for a distance of a mile or mile and a half is \$1.00 to \$1.50 on local Texas switching rate, but it is \$2.50 on Interstate the same distance, that is in handling Interstate shipments. I think the Texas scale for switching is \$2.00 for two miles and less, that means two miles from the depot. I imagine that these shipments involved in this case were shipped less than a mile from the depot. The Texas rate for switching these cars would have been \$1.50 per car, that is if the Powell Company owned the docks, if it was shipped to the warehouse owned by the consignee or his place of business. The Interstate Commission switching charge is \$2.50 per car for two miles and less. The switching rate does apply when the road carries freight to a certain town and it is called upon to deliver that to some point within the switching limits of that town, within the yard limits in any event; if switching from some other road the road that performs the terminal service gets the switching charge. I have not with me Amendment No. 26 Tariff No. 1619. I don't know that I am acquainted with it unless you give me some idea of what it is. If it is tariff filed by the Texarkana & Ft. Smith Railway

Company and the Kansas City Southern applying to Interstate shipments moving from Ruliff to Beaumont, Port

286 Arthur, Sabine Pass and Sabine I guess it would be in our files if we are parties to it. I haven't got it now. I am not connected with any railroads that go to Galveston. I am General Freight Agent of the Texas & New Orleans Railroad from Houston to Sabine and from Sabine to Dallas. The name of the Southern Pacific line running from Houston to Galveston is G. H. & S. A., Galveston division.

We have no line of railroad going to the docks at Port Arthur, we have a line of railroad going into the town of Port Arthur only, but do not reach the docks.

We haul oil to Sabine. I do not know just exactly what the movement is, but we haul some from Louisiana in train loads; we do not reach Spindletop, nor do we haul from Batson and Humble, the H. E. & W. T. reaches Humble, but I don't think there is any movement of oil from Humble to Sabine. The movement of this oil in Texas is very little, it goes in pipe lines. I suppose there is some movement in Texas oil. I don't know of any particular shipment of Texas oil going to Sabine.

Cross-examination:

As I said the State or Interstate tariffs were referred to as to what would be the correct rate with reference to whether it would be a State or Interstate shipment. Certainly if it is a foreign shipment we have to apply the rate that is on file with the Interstate Commerce Commission, that is if it is foreign shipments.

Defendant here introduced the blue print map which has been referred to by the witness marked Defendant's exhibit No. 3.

The Texarkana & Ft. Smith Railroad Company offered the evidence as follows:

The Joint Distance Tariff Kansas City Southern and Texarkana & Ft. Smith Railway Company Interstate Commission No. 842, Port Arthur Route No. 822A cancelling No. 822. It is certified to 287 by the Railroad Commission, also has certificate of all the Amendments since the beginning of 1900 and bringing it down to since this controversy arose, copy of same is hereto attached marked exhibit Defendant's exhibit No. 8 and made a part hereof.

It was here stated by the Defendant, Texarkana & Ft. Smith Railway Company that Amendment No. 10 to I. C. C. No. 551 heretofore introduced in evidence by the defendant, Texas & New Orleans Railroad Company, shows what the proportional rate of the Texas & New Orleans Railroad on the shipments is, and not what the proportional rates on the other company (Texarkana & Ft. Smith Railway Company is, therefore we introduce so much of the tariff just described as shows the local rate from Ruliff, Texas, to Beaumont, Texas, on export shipments, or Interstate shipment.

Defendant Texarkana & Ft. Smith Railway Company next introduced that part of Joint Distance Tariff, showing the Tariff as shown in Port Arthur Route Tariff No. 22A Interstate Commerce Commission No. 841, rate on lumber for distances of over 25 miles and not over 30 miles, ten cents. In this connection in response to inquiry from plaintiff, defendant stated that the Tariff last mentioned was issued May 11th, 1900, and became effective May 17th, 1900, and that a certified copy already introduced includes all Amendments to that Tariff down to including Amendment No. 21 which became effective October 17th, 1907. This Amendment doesn't change the rate effective.

It was here agreed in open court between the parties that the distance between Ruliff, Texas, and Beaumont, Texas is not over 25 miles and is under 30 miles.

In behalf of both defendants extracts from the 15th Annual Report of the Railroad Commission in the State of Texas was introduced as follows;

288 *"Fifteenth Annual Report of the Railroad Commission of the State of Texas.*

OFFICE OF THE RAILROAD COMMISSION OF TEXAS,
AUSTIN, TEXAS, October 31, 1906.

"Class and Commodity" tariffs of the Commission, which are now in force, or embraced in Appendix "A."

Also the following was offered from page 65 to the said report, being the first page in Appendix A;

(22.)

"Appendix A."

Showing all tariffs made by the Commission in the form in which, at the date of this Report, they existed, all matter altered or supplanted, by Amendment having been eliminated.

Also the following from page 184 of said Report; "Effective March 3, 1900. (T. & N. O. Authority No. 47) Rates for the transportation of lumber and articles taking the lumber rates, in carloads from all points on the Texarkana & Fort Smith Railway, south of the Louisiana-Texas State line, to all stations on the Galveston, Harrisburg and San Antonio Railway; Houston & Texas Central Railroad, and the Texas & New Orleans Railroad, the same as now in effect from Beaumont, except that the minimum through rate shall be 12½ cents per 100 pounds."

The defendant, Texarkana & Ft. Smith Railway Company, next offered in evidence the letters and telegrams passing between Mr. Beard, General Freight Agent of the T. & N. O. Company and R. R. Mitchell, the general Freight Agent of the Texarkana & Ft. Smith Railroad Company, as follows;

(Telegram.)

"HOUSTON, 9, 19, '06—Filed 6.10 p. m.

R. R. Mitchell, Texarkana:

Wire quick if you have issued any through rates on lumber Ruliff to Sabine for export file C. W. G.—19.

T. G. BEARD."

(Telegram.)

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"TEXARKANA, TEXAS, 9, 20, '06.

T. G. Beard, Houston, Texas, via Beaumont:

B—Your wire 19th file C. W. G.—19. We publish no rate on lumber from Ruliff to Sabine when for export.

R. R. MITCHELL."

(Letter.)

HOUSTON, TEXAS, Sept. 26, 1906.

Mr. R. R. Mitchell, G. F. A. & T. & F. S. Ry., Texarkana, Texas.

DEAR SIR: Will you kindly advise me what rate to apply on lumber from Ruliff destined to Sabine for export, as 4 cents per hundred pounds will not when for export. If no through rate please advise what your rate is to Beaumont on shipments destined for Sabine for export.

Yours truly,

T. G. BEARD,

G. F. A.

A."

F. A. A.

(Letter.)

"OCTOBER 2ND, 1906.

Mr. T. G. Beard, G. F. A., T. & N. O. R. R., Houston, Texas.

DEAR SIR: Your file A-1251, September 26th. We published no export rates on lumber from Ruliff to Sabine. If any shipments

are offered or any business has moved we will require our Interstate local of 10 cents per 100 pounds from Ruliff to Beaumont.

Yours truly,

G. F. A."

F. A. A.—J. F. H.

Defendant, T. & N. O. R. R. Co., also offered the above telegrams and letters to show the good faith in which their agent acted.

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Plaintiff's Rebuttal Testimony.

Major J. C. Mow, being sworn for the plaintiff testified as follows:

My name is J. C. Mow. I am agent here for the Texarkana & Ft. Smith Railway Company, its General agent in Beaumont. I had the same position in 1906. I keep in my office the tariffs published by the Texarkana & Ft. Smith Railway Company pertaining to Interstate service.

At the request of plaintiff's attorney the witness produced the paper called "Amendment 26 to I. C. C. No. 1619, and stated that the same was Amendment No. 26 and was filed with the Interstate Commerce Commission.

It was also stated that this would be designated as Amendment No. 22 Joint Tariff, Port Arthur Route No. 1417A, and to be I. C. C. Amendment No. 26, Port Arthur Amendment 22. That this tariff was filed both with the Interstate Commerce Commission and with the State Commission of Texas.

It is also stated that this copy was received July 31st, 1906, and that indicated the date on which the witness received same in his office.

WITNESS: This came to my office from the General Freight Office at Texarkana, and was sent to me as the sheet showing the rate. I desire to correct that statement. It is possible that this statement came to me from Kansas City, as I am agent for both the Texarkana & Ft. Smith and the Kansas City Southern, and it is very likely that some of these may have come from Kansas City, some of them do come to me from Kansas City and some from Texarkana. I would take it that Item No. 30 in this Amendment shows the State rate for the reason that it mentions two points within the State. Yes, this is a document filed by the Texarkana & Ft. Smith Railway Company, the Kansas City Southern and other Railroads with the Interstate Commerce Commission. I would not be authority to answer intelligently as to whether the road files with the Interstate Commerce Commission the rates on Interstate shipments or interstate commerce, or whether it files only the rates on State Commerce, because

291 I do not file those with the Commission and I haven't got the data to give you exactly. I presume they file the rates on Interstate Commerce, but I don't know personally.

There is no separate sheet, separate from this, known as Amendment 26 to I. C. C. No. 1619; this is also Amendment No. 22 Joint Tariff, Port Arthur Route No. 1417A. I understand they are one and the same thing, and I would take it that that term up at the top of Amendment No. 26 to I. C. C. 1619 shows that this is filed an I. C. C. number, that is an Interstate Commerce Commission number.

Plaintiff here offered No. 30 from Amendment No. 26 to I. C. C. 1619 which was designated as Amendment No. 22 Joint Tariff Port Arthur Route No. 1417A issued July 21st, 1906, signed by R. R. Mitchell, General Freight Agent of the Texarkana & Ft. Smith Railway Company. All that was offered also on the first page of said Amendment, same being designated "Plaintiff's Exhibit No. 50" and hereto attached.

WITNESS: Stations north of Beaumont would include Ruliff.

The tariff which you now hand me, designated as Amendment No. 22 to I. C. C. number 1619, filed during the year 1906 re-issued October 7th, 1907, and effective November 10th, 1907, came into my possession October 12th, 1907. It was last year these shipments were made, in 1906, so they came into my possession after the shipments in controversy. The date October 7th means the date it was published, printed probably. I wouldn't think that that related to the date it was filed at Washington, or issued to be filed there. It is usually issued before it is filed. The filing date follows the issuing date. My understanding is, that the Railroad Company makes up a tariff sheet and issues it and afterwards sends it on to Washington and files it. I would like to call your attention to that item there (ind.) I will read from Amendment No. 1619, in Amendment No. 32 to I. C. C. 1619, I will read the item 35, which is as follows; "Cancels 9 and 30." That number 30 referred to is Item 30 in Amendment 36 I. C. C. Number 1619, and which was offered in evidence -while ago.

"Lumber car loads, minimum weight 30,000 pounds, effective March 5th, 1906." That means the rate specified in that item would be effective on that date. That is, the rate specified there would be effected March 5th, 1906.

Language in that statement "Stations on the Texarkana & Ft. Smith Railroad north of Beaumont to Sabine River via Beaumont and T. & N. O. R. R." that is from those stations "to Port Arthur, Texas, Beaumont, Texas, Sabine Pass, four cents." That does not include Sabine. I do not know why. That Item No. 35 does not include Sabine, but it does cancel the whole Item No. 30. Then this rate says it will not apply on Interstate movements, will not apply on shipments moving between points where Interstate shipments are involved. Those demand then that they have the State rate recognized if the destination proper is those points. If it is intended as an export rate it is not. Item 30 does include Sabine but this Item 35 you are asking me about cancels the entire Item No. 30.

Besides Amendment No. 26 I. C. C. No. 1619, this Item No. 30 I

have here Amendment No. 29, but I have no other Amendments to this tariff from numbers 22 to 30. I did have them all in my office but as they were cancelled and the live issues come out I didn't keep the old ones; these three cover all the changes that were in that tariff—No. 1417,—that is, the issues I have got in my office cover all the changes. Items 35 and 31, this was prior to Item No. 35 and did not refer to it. The only thing I have here which refers to Item No. 30 is this Amendment No. 26 to I. C. C. number 1619. There is nothing in Item 31 that refers to Item No. 30. Amendment No. 26 and Amendment No. 32 embrace the only Items relating to shipments from points on the Texarkana & Ft. Smith Railway north of Beaumont, and the Sabine river to those points, Sabine Pass, Sabine and Port Arthur that I locate among the papers I have here.

293 Cross-examination:

As Amendments come out and change the tariffs from time to time or make different rules, the ones that become useless I do not preserve. The only file I have is Amendment No. 26 that cancels Nos. 24 and 25 to I. C. C. No. 1619, I have that on file in my office. Item No. 30 of that shows the rate from Ruliff which is south of Sabine river to Port Arthur, Sabine Pass and Sabine is four cents per hundred weight. That issue became effective March 6th 1906. I can't locate Amendment- 27, 28 and 29 as I have it. This Amendment 22 cancels Amendment 20 and 21. Amendments 23, 24, 25 and so I haven't them, but I have here Amendment No. 30 which was issued October 7th and reads on the face of it "Effective Nov. 10th 1907 except as noted in reissued items."

"Q. This was effective March 6th 1906 and cancelled 9-30 lumber carloads from stations on the Texarkana & Ft. Smith Railway north of Beaumont to the Sabine river to Port Arthur, Texas, Beaumont, Texas and Sabine Pass, and now in the next column it gives the rate, in the last column gives the rate four cents but says "Lumber"?"

A. I believe all shipments which move between points where an Interstate number is involved, and Interstate movement is involved, Texarkana & Ft. Smith tariffs Nos. 28 and 29, that appears on this tariff.

R. R. MITCHELL, sworn for the plaintiff testified as follows;

Direct examination:

I have not with me, in my possession at present the Amendments intervening between Amendment 26 to I. C. C. 1619 and Amendment No. 32 to I. C. C. 1619. I am General Freight Agent of the Texarkana & Ft. Smith Railway Company. I knew about this suit and the character of controversy that came up. Have known that for a long time. I haven't brought any copies here from
294 the Interstate Commerce Commission, except that mileage sheet filed in 1900, and I didn't bring that, Mr. Glass brought it. I didn't bring anything. As to whether these tariffs are filed

with the Interstate Commerce Commission and these copies sent on to the agents in Texas, will say I do not file these issues. The Kansas City office does that. I get copies of them. I was the General Freight Agent and they consulted me sometimes as General Freight Agent of the Texarkana & Ft. Smith Railway Company. I have a voice in making these rates.

"Q. You know when they are made?

A. Well the Joint rates, I don't always know when they are made unless they pertain particularly to the Texarkana & Ft. Smith Railway. When they pertain to the Texarkana & Ft. Smith Railway we make those rates. I get the tariff. The Kansas City Southern has our power of attorney and we get the tariffs. Then it is part of my duty to mail them to our local agents, ordinarily we do that. Major Mow wouldn't necessarily have to come into possession of all the tariffs from me; that tariff you have reference to may have come to him from the Kansas City office. I stated that I didn't have any of those I. C. C. numbers here at all. I don't recall tariff No. 713 B, as to whether that is an interstate or state tariff.

Counsel requests the witness to read a telegram which he places in the witness' hands, after which the witness continues:

I never sent the telegram, the rate clerk sent it. It is from my office I understand, I didn't authorize it. I never did before these shipments apply the ten cent rate as our share of any shipments from Ruliff to Sabine. We had always applied the four cent rate, the Texas Commission rate. I don't know whether a lot of the stock, the lumber that went to Sabine from Ruliff was of the same character, dimension stuff, 30 cubic average. I didn't know exactly that it was moving from Ruliff to Sabine. I knew that 295 was the rate on lumber, I looked it up several times. As to whether it was being collected on lumber from Ruliff to Sabine, if any moved I supposed it was, but I don't know that any moved. I think I had talked with Mr. Walden but I don't know that I talked with Mr. Walden about any shipments of lumber to Sabine. I had several conversations with Mr. Walden. As to knowing that the Sabine Tram Company was shipping lumber in car load lots from Ruliff to Sabine, I don't believe I knew that previous to this movement. I didn't know they were applying this four cent rate all the time, but I know that would be the rate applied. I can't say that I actually know that it had been applied. As to various shipments of lumber having been shipped to the firm of Reese-Powell since 1904, will say that I was only appointed General Freight Agent on June 1st 1906, consequently I would know very little about that. Before that time I was General Agent at Shreveport.

I don't know what I. C. C. No. 1619 is, as to the contents, but generally speaking it is a certain number that a certain Railroad gives to a tariff that they file with the Commission, they give it an I. C. C. number so that the Commission can designate that tariff instead of using the tariff number; instead of using the tariff number they use their own number. The Port Arthur Tariff Route No. I. C. C. 1619 is that tariff that the Kansas City Southern filed with the Interstate

Commerce Commission, to which the Texarkana & Ft. Smith Railway is a party. That is an Amendment to that tariff. Those Amendments are filed with the Interstate Commerce Commission. This Amendment 32, that is an Amendment, another Amendment to I. C. C. 1619. Those Amendments show the Interstate rates.

Cross-examination:

"Q. Do they show the rates on foreign shipments too?

"A. I don't understand—you mean, do they carry export rates?

"Q. Yes sir.

"A. No, they just show Interstate rates. Up to the time of
296 filing Supplement No. 10 effective August 6th 1906 filed by the Texas & New Orleans Railroad Company, the Texarkana & Ft. Smith Railway Company, the latter being a party to it up to that time the rate from Ruliff to Sabine had been four cents. It corresponded and was the same rate as the Texas Commission rate, that made it. It was the rate shown in the rate filed with the Interstate Commerce Commission. Prior to the filing of Supplement No. 10 for the T. & N. O. R. R. Co., they joined the Texarkana & Ft. Smith Railway to it. Prior to that filing of Supplement No. 10 for the T. & N. O. they joined the Texarkana & Ft. Smith Railway to it. That was the rate applied on lumber prior to the supplement No. 10 filed by the T. & N. O. R. R. Co. on export lumber shipped to Sabine. At the date of this letter which has been introduced in evidence written by me to Mr. Beard, stating that the local rate proportional rate of the Texarkana & Ft. Smith from Ruliff to Beaumont on lumber moving for export was ten cents, I honestly believed that that was the local rate from Ruliff to Sabine on business moving for export. That is, I thought it was ten cents per hundred pounds from Ruliff to Beaumont, that was why I wrote the letter or authorized it to be written. At the time I stated in my telegram to Beard that we had no through rate on lumber from Ruliff to Sabine, we did not have any through rate on lumber then, that is in September 1906. The T. & N. O. cancelled the only through rate we had. The Texarkana & Ft. Smith was made a party to that cancellation, were notified by their issue, which cancelled it, and we couldn't object to it.

Redirect examination:

We didn't assist in making it, we didn't sign it, we just received notice. When we charged the four cent rate we certainly believed that was the proper rate. We charged that under tariff issued under Sunset Route Number I. C. C. 551. That Item No. 101 in the rate
297 sheet doesn't say anything about export, and Item there No. 30 which we filed with the Interstate Commerce Commission doesn't show, doesn't say anything about export. Both of them were filed with the Interstate Commerce Commission. I don't know that I called ours the State rate and the other the export rate. After the Interstate Commerce Commission signified its intention of having charge of export business we put in what we called export rates. We did not put the rates into Sabine because we did not

carry any shipments there. The rates mentioned while ago would necessarily be our export rate because that would be the only rate we had there. We filed this tariff with the Interstate Commerce Commission, tariff number 1619. It became imperative because the T. & N. O. did not concur in it and gave us notice, published this rate cancelling this rate with that for export, consequently we didn't apply the rate. I am speaking about before they cancelled it, that was the Commission rate and we observed it. I will say that that was the established rate.

Here the defendants introduced statement furnished by plaintiff taken from *their* books covering the handling of the shipments by the plaintiff, the lumber that was involved in this suit, and which was testified to by Mr. Walden as being a correct statement from the books of the Sabine Tram Company. Showing in Column the dates of the shipments of the cars, the numbers and initials of each car, the gross amount received for each car, the freight paid and the number and date of the sight draft drawn in connection with each shipment, the total amount received for all the shipments Ten Thousand eight hundred and sixteen dollars and eighty five cents, the total amount of freight paid amounting to \$3156.03, the dates and amounts of the payments of refunds to W. A. Powell Company, Ltd. for freight paid by that Company, being one payment Nov. 7th of \$125.06; another in November 15th for \$2300.00; another December 17th for \$730.87. This statement is hereto attached and marked Defendants' Exhibit No. 6.

298 J. B. SMITH, sworn for plaintiff testified as follows;

Direct examination:

I have inspected the switch tracks at Sabine, especially the switch track leading from the depot into the slip No. 3, Southern Pacific slip. This slip is accessible by that shorter track. That track must be about 900 feet from the depot, it may be a few feet more or less than that. There is nothing to prevent cars being switched over that track. It was in good shape at the time of these shipments in question. I do not know that the towns of Sabine and Sabine Pass had been associated in the popular mind as one and the same place. I don't know, the two places have always of course been considered two different places. There are houses all the way up as far as the town goes. The sulphur docks are about half a mile up there, I have been there a good many times.

Cross-examination:

I should think the cars loaded with lumber would be set in on the north side of the slip. I don't say that I saw any of these particular cars set in, but I was down there in 1906. Of course I don't say that I saw these particular cars set in. I didn't know the lumber shipped by the Sabine Tram Company. I don't know as a matter of fact how any of these cars shipped by the Sabine Tram Company were set into slip No. 3. If the cars were not switched directly to

the slip, when they reached the town of Sabine they were set on the storage track, and it would be just about as near down to the slip from one switch to the other. If they were set down on the storage track and allowed to accumulate the engine would have to go down and get them of course. If the cars were set in on the storage track and allowed to accumulate the engine would have to go in there and get them, take one trip to set them on the storage track and one trip to get them out to set them in the slip and then it would take another trip to go and get that empty car, whether along the switch from the main line to the slips or from the depot to the slips.

299 The defendant then asked the witness T. G. BEARD the following question:

"Q. What is the distance from Sabine Pass to Sabine station?

A. The distance is exactly one and eight-tenth- miles, the stations are shown separate and distinct on the time cards.

Defendant, Texas & New Orleans Railroad next introduces in evidence exhibit hereto attached marked Defendants' Exhibit No. 7 showing the amount and dates of the several payments of freight on the shipments involved in this controversy, and it is agreed that the local agents of the Texas & New Orleans Railroad Company if present would swear that the payments were made in five distinct payments on the dates shown in the Statement introduced. That is, the payments on the entire 33 cars involved in this controversy, were made as shown in this statement. The payments, September 19th, September 24th, September 29th 1906, were payments originally made at the rate of six cents, afterwards corrected to fifteen cents, and that all the payments made on the fifteen cent basis were included in the payments made October 17th, October 18th, October 31st and November 12th and November 17th 1906.

I, C. L. Boykin, official court reporter of the 60th Judicial District Court in and for Jefferson County, Texas, do hereby certify that the foregoing 93 pages together with the exhibits hereto attached contain a true and correct statement in narrative form of all of the evidence introduced both by plaintiff and defendants together with all objections made as to the admissibility of testimony, both by plaintiff and defendant, the ruling of the court thereon and all exceptions taken to such rulings where such objections are noted herein, to the best of my ability and knowledge.

My pay for such transcript is \$100.00.

Witness my hand this the 21st day of February A. D. 1908.

G. R. HALL,

800

*Dept. Official Court Reporter, 60th Judicial
District Court, Jefferson County, Texas.*

2-24-1908.

Approved:

GREER, MINOR & MILLER,

Att'ys for Sabine Tram Company.

BAKER, BOTTS, PARKER & GARWOOD, AND

PARKER & HEFNER AND

WILL E. ORGAIN,

Att'ys for Deft T. & N. O. R. Co.

HIRAM GLASS,

Att'y for Deft T. & Ft. S. Ry. Co.

A.—G. R. H.

(Copy.)

Railroad Commission of Texas.

Commissioners: Allison Mayfield, Chairman; L. J. Storey, O. B. Colquit, E. R. McLean, Secretary.

AUSTIN, TEXAS, April 17, 1907.

Before the Railroad Commission of Texas.

No. 726.

THE STATE OF TEXAS ex rel. THE SABINE TRAM COMPANY

vs.

T. & F. S. Ry. Co. et al.

It appearing to the Railroad Commission of Texas that the Complainant, the Sabine Tram Company, has asked leave to withdraw its complaint and dismiss this cause without prejudice, it is accordingly so ordered.

ALLISON MAYFIELD, *Chairman;*

L. J. STOREY,

O. B. COLQUITT,

Commissioners.

Attest:

E. R. McLEAN, *Secretary.*

I, E. R. McLean, Secretary of the Railroad Commission of Texas, do hereby certify that the above is a true and correct copy of an order this day entered by said Commission in Cause No. 726, The State of Texas ex rel. The Sabine Tram Company vs. T. & F. S. Ry. et al.

Given under my hand and seal of said Commission, at the City of Austin, this the 17th day of April 1907.

E. R. McLEAN,

Secretary R. R. Commission of Texas.

Ex. A.

Sabine Tram Co.,
 Rec'd Aug. 29, 1906
 Beaumont, Texas.

Official Order No. 748.

NEW ORLEANS, Aug. 28, 1906.

Messrs. Sabine Tram Co., Beaumont-Tex.:

Please enter our order for the following wood goods:

Quantity: 500,000 ft. Long Leaf Yellow Pine Sawn Timber.

Dimension: 30 cubic average.

Price: \$21.00 delivered in the water at Orange or \$21.50 f. o. b. cars Sabine, your option.

Delivery: September/October 1906.

Payment: Usual Terms.

W. A. POWELL, CO., LIMITED,
 Per I. C. JANSSEN.

6793.

P. #1, G. R. H.

302 Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B.
 Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band Sawed Long Leaf Calcasieu
 Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Paid Up Capital, Surplus & Undivided Profits, \$2,412,973.60.

Railroad Material a Specialty.

All agreements made contingent upon strikes, fires, accidents or
 causes beyond our control.

C. E. Walden, Assistant Secretary.

Cable address, "Smyth."

All standard codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity
 of planing mills, 75 million ft.

Maverick-Clarke, S. A.

BEAUMONT, TEX., 8/27/06.

W. A. Powell Co., Ltd., New Orleans, La.

GENTLEMEN: We confirm having sold your Mr. W. A. Powell
 500 M. Ft. of thirty cubic average timbers at \$21.00 in the water

at Orange or \$21.50 f. o. b. cars Sabine, our option, September and October delivery. We have entered same under our #6793 for our best attention.

Thanking you for the order and awaiting your further commands, we are,

Yours very truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W.—M.

Received Aug. 28, 1906.
Ans. 8/28/06.

P. #2, G. R. H.

303

Sabine — Co.,
Rec'd Aug. 29, 1906.
Beaumont, Texas.

W. A. Powell Company, Limited,

Lumber Exporters,

804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Aug. 28, 1906.

Mess. Sabine Tram Co., Beaumont-Tex.

DEAR SIR: Enclosed please find our official order for 500,000 ft. of 30 avg. timber bought by our Mr. Powell on his yesterday's visit.

Besides, it is understood that you agree to furnish us with all the 30 avg. you can give us for prompt shipment, over and above the order.

Kindly enter accordingly, and oblige,

Yours truly,

W. A. POWELL CO. LTD.
I. C. JANSSEN.

Dic. H. J.
Enclosure.

6793.

P. #3, G. R. H.

304 Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B. Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band Sawed Long Leaf Calcasieu Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Paid Up Capital, Surplus & Undivided Profits, \$2,412,973.60.

Railroad Material a Specialty.

All agreements made contingent upon strikes, fires, accidents or causes beyond our control.

C. E. Walden, Assistant Secretary.

Cable address, "Smyth."

All *stranded* codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity of planing mills, 75 million ft.

Maverick-Clarke, S. A.

P. #4, G. R. H.

BEAUMONT, TEX., August 31, 1906.

W. A. Powell Company, New Orleans, La.

DEAR SIR: Referring to your order 748 and your letter of the 28th, beg to advise that we have instructed our shipping department to begin work on this order at once and to make delivery as fast as possible to you at Sabine. These instructions are given, due to the fact that it will take us some two or three weeks to get ready to make delivery at Orange and we think it best to commence delivery at Sabine and change to Orange as soon as we are in position to do so.

In this connection, beg to advise that the railroad company will probably try to collect freight in excess of 4¢ (as they are trying to increase their export rate.) We wrote you in reference to this on the 29th. We would thank you to refuse to pay anything in excess of 4¢ until it is absolutely demonstrated that they are going to enforce that rate and we would thank you to make each payment under protest, recording in your check "Rate paid under protest." In this way, we would protect our interest and preserve all our rights. (The Railroad Commission has ruled that 4¢ is the correct rate and they have a test case in the courts now.) Please advise if you will do this.

Awaiting your further commands, we are,

Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W.: D.

P. #4

305 Geo. W. Smyth, President; J. C. Smyth, Vice-Pres't; J. B. Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band Sawed Long Leaf Calcasieu Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Paid Up Capital, Surplus & Undivided Profits, \$2,412,973.60.

Railroad Material a Specialty.

All agreements made contingent upon strikes, fires, accidents or causes beyond our control.

C. E. Walden, Assistant Secretary.

Cable address, "Smyth."

All *stranded* codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity of planing mills, 75 million ft.

Maverick-Clarke, S. A.

BEAUMONT, TEX., *September 1st, 1906.*

W. A. Powell Company, Limited, New Orleans, Louisiana.

GENTLEMEN: We are to-day making sight draft on you, through the First National Bank of Beaumont, for \$2313.27, in settlement of seven cars, as per statement herewith enclosed.

Please protect draft when presented and oblige,

Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W.: D.

Enclosure.

P. 5, G. R. H.

308

Sabine Tram Co.,
Rec'd Oct. 31, 1906.
Beaumont, Texas.

W. A. Powell Company, Ltd.,

Lumber Exporters,

804-805 Hibernia Bank Bldg.

NEW ORLEANS, LA., *Oct. 30, 1906.*

Mess. Sabine Tram Co., Beaumont-Tex.

DEAR SIR: Enclosed please find memo. of freights paid for your account cars received by us, amounting to \$594.16, for which

kindly send us your check in settlement. We also enclose you here-
with paid freight bills.

Yours truly,

W. A. POWELL CO. LTD.,
I. C. JANSSEN.

Enclosures.

P. #6, G. R. H.

W. A. Powell Co., Ltd.,
Lumber Exporters,
804-805 Hibernia Bank Building,
NEW ORLEANS, LA., Nov. 3, 1906.

Mess. Sabine Tram Co., Beaumont-Tex.

DEAR SIRS: Enclosed please find freight bills to the amount of
\$125.16, paid for your account, for which please reimburse us at
your earliest convenience.

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN.

Dis. H. J.
Enclosure.

P. #7, G. R. H.

307 Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B.
Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band-Sawed Long Leaf Calcasieu
Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Paid Up Capital, Surplus & Undivided Profits, \$2,412,973.60.

Railroad Material a Specialty.

All agreements made contingent upon strikes, fires, accidents or
causes beyond our control.

C. E. Walden, Assistant Secretary.

Cable address: "Smyth"

All stranded codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity
of planing mills, 75 million ft.

Maverick-Clarke, S. A.

BEAUMONT, TEX., November 7th, 1906.

W. A. Powell Company, Limited, New Orleans, Louisiana.

GENTLEMEN: We beg herewith to enclose New Orleans exchange
for \$125.16, covering freights on the following cars:

SABINE TRAM COMPANY.

109

21896	21831	57361	21139	24398
26528	21376	21694	24439	21118
24966	26537	26072	26755	24036

Also New Orleans exchange or \$125.16, covering the following cars:

21629 21139 25187 21037

Kindly acknowledge receipt and oblige,
Yours truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

A. J. K.—D.
Enclosure.

P. 8, G. R. H.

308

W. A. Powell Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 6, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIRS: We beg to hand you statement of freight paid for your account at Sabine, to the amount of \$2547.64, for which kindly send us check by return.

We also would kindly request you to remit us for the freight paid as per our letters of Oct. 30 and Nov. 3rd. As you are always drawing in full against your invoices, this is practically an outlay of money for your account, and we therefore kindly request you to remit us for these statements immediately upon receipt, else we could not allow you to draw for full invoice amount in future.

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN.

Dec. H. J.
Enclosure.

P. 9, G. R. H.

309

W. A. Powell Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 6th, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.:

We debit your account as follows:

Initials	Car No.	Date W. B.	Amt. freight.	
K. C. S.	21139	9/7	\$28.61✓	
"	21629	9/8	60.24✓	
T. F. S.	21037	9/10	36.00✓	
K. C. S.	24751	9/11	55.80✓	
"	24751	9/11	28.70—	37.20*
"	25187	9/12	52.92✓	
S. P.	59100	9/15	28.76—W*	1.50*
T. C.	3011	9/15	25.50—	1.50*
"	3P11	9/15	36.00✓	
S. P.	59100	9/15	55.89✓	
"	55507	10/2	73.72—W*	1.82*
"	55507	10/2	1.00✓	
K. C. S.	25197	10/3	129.60—W*	3.15*
S. A.	1140	10/3	61.60—W*	1.50*
K. C. S.	21494	10/5	93.48—	2.33*
"	20006	10/5	119.00—	2.90*
T. & N. O.	3174	10/5	85.50—	2.10*
K. C. S.	24517	10/5	98.10—	2.35*
"	25288	10/9	97.30—	2.35*
M.	21117	10/11	140.22—	3.42*
S. A.	40559	10/11	120.40—	2.95*
F. & W. S.	1667	10/15	111.80—	2.70*
S. P.	78800	10/15	126.70—	3.10*
S. H. T. O.	126-51	10/18	190.80—	4.67*
G. H. & S. A.	5327	10/19	183.70—	4.45*
M.	21226	10/21	143.75—	3.50*
L. C.	97758	10/22	125.90—	3.05*
T. & N. O.	20961-5105	10/25	216.95—	5.30*

Total.....\$2547.64

Should have charged us \$2501.52.*

P. 9A, G. R. H.

[* In pencil in copy.]

310

Sabine Tram Co.
Rec'd Nov. 15, 1906.
Beaumont, Texas.

W. A. Powell Co., Ltd.,
804-805 Hibernia Bank Building.

NEW ORLEANS, LA., Nov. 13th, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIR: We have taken the liberty of drawing S/D on you for \$2501.52 account of freight paid on sundry cars for your account at Sabine, which we would ask you to kindly protect on presentation. You will note that we have deducted the \$46.12 which we over-charged you, being wharfage charges which we have to pay.

Yours truly,

W. A. POWELL CO., LTD.
W. T. CALLON.

Dict. W. J. C.
Return.

P. 10, G. R. H.

311 Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B. Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band-Sawed Long Leaf Calcasieu Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Paid Up Capital, Surplus & Undivided Profits, \$2,412,973.60.

Railroad Material a Specialty.

All agreements made contingent upon strikes, fires, accidents or causes beyond our control.

C. E. Walden, Assistant Secretary.

Cable address: "Smyth."

All stranded codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

Annual capacity of saw-mills, 100 million ft.; annual capacity of planing mills, 75 million ft.

P. 11, G. R. H.

A. 11/22/06.

BEAUMONT, TEX., 11/16/06.

W. A. Powell Co., Ltd., New Orleans, La.

GENTLEMEN: Your favor of the 6th enclosing E/Bs covering shipments made by us from our Ruliff mill to Sabine, received. We found that your representative in paying these E/Bs had permitted the Railroad Company to insert wharfage in same and that you had charged the wharfage to our account, amounting to \$56.12, whereas we should have only been charged, under our contract for the delivery of this material to Sabine, for the freight to Sabine amounting to \$2501.52. We called your Mr. Flanagan to our office and explained the matter to him and advised we would have to have a new set of E/Bs simply showing the freight for which we were only responsible, before we could pay same. He advised your Mr. Powell would be in Beaumont in a day or two and we held the matter for his arrival. He, however, failed to come.

Yesterday your draft for \$2501.52 to cover freight was received and Mr. Flanagan advised us he had explained to you that you had charged the wharfage to us in error and this accounted for the reason you drew for the correct amount when your statement called for freight and wharfage. We have instructed the bank to return your draft as we cannot accept E/Bs showing any wharfage whatever as this is a matter in which we are not at all interested, therefore do not want same to appear in the E/Bs. We are returning the

E/Bs to you herewith and must ask that you have same replaced by others covering freight and freight only, when we will be pleased to remit you in full to cover all freight money we are due you.

312

We do not desire to work any hardship on you, however, and we are accordingly enclosing you herewith First National Bank check #36579 on the State National Bank of New Orleans for \$2300.00. We are charging this to your account direct and when you return us the E/Bs properly made out, we will then pass this amount to the credit of your account and charge to freight account where it properly belongs and will then remit you promptly to cover the balance of freight due.

Trusting that you appreciate our position and that you will give the matter of having proper E/Bs rendered us your prompt attention, we are,

Yours very truly,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. E. W.—M.
Enclosure.

Sheet 2, P. 11, G. R. H.

W. A. Powell Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Nov. 22, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIR: We have before us your favor of the 16th inst. referring to the matter of freight.

It is entirely in order that we should pay the wharfage on the cars, and we therefore deduct from our debit note \$56.12, which leaves \$2501.52. You sent us a check for \$2300, and we therefore kindly request you to send us an additional check for \$201.52. Mr. Flanagan has handled this entire matter, and we therefore kindly request you to arrange with him for obtaining separate bills for freight and wharfage. In the meantime, we will appreciate your remittance as the amount only represents an outlay for your account.

313 Yours truly,

W. A. POWELL, LTD.
I. C. JANSSEN.

Dic. H. J.

P. S.—Enclosed find freight bills.

P. 12, G. R. H.

W. A. Powell Company, Limited,
Lumber Exporters,
804-805 Hibernia Bank Bldg.

NEW ORLEANS, U. S. A., Dec. 12, 1906.

Mess. Sabine Tram Co., Beaumont, Tex.

DEAR SIR: With reference to our previous correspondence regarding the railroad freights we paid for your account at Sabine, the

expense bills of which showed besides the freight also the wharfage paid for each car, we now have a letter from the Tex. & N. O. R. R. Co., which we herewith enclosed, stating that it has always been a custom to issue one bill for freight, and wharfage, and that they cannot make a change for the cars which are shipped by you to Sabine. Under the circumstances we regret that we cannot be of any assistance to you, and we therefore kindly request you to remit us for the balance of the freight charges paid for your account.

Yours truly,

W. A. POWELL CO., LTD.
I. C. JANSSEN.

Enc. H. J.
Enclosure.

P. 13, G. R. H.

314

Form 1604.

7-27-0665M.

Local (Old Form 2665).

Texas & New Orleans Railroad Company.

Sunset Route.
Oil Burning Locomotives.
Ocean to Ocean.

In reply please refer to No. 4.

Office of Division Freight and Passenger Agent.

A. R. Atkinson, Division Freight and Passenger Agent.

BEAUMONT, TEXAS, 12/6/06.

The W. A. Powell Co., Ltd., 804-805 Hibernia Bank Bldg., New Orleans, La.

GENTLEMEN: Your favor of December 5th relative to freight bills at Sabine including wharfage. It has been the custom of our accounting department at Sabine to include the wharfage on these freight bills. I had this matter up at request of your Mr. Flanagan to have separate freight bills issued covering freight and wharfage but am advised by our company that it is not desired to change this old established custom, and I am therefore, unable to comply with your request, as much as I desire to do so.

Yours truly,

A. R. ATKINSON.

P. 14, G. R. H.

315 Law Offices Greer, Minor & Miller, Beaumont, Texas.

Geo. D. Greer.

F. D. Minor.

W. E. Miller.

P. 15, G. R. H.

BEAUMONT, TEXAS, Dec. 14, 1906.

Received of the Sabine Tram Company \$3156.03 Dollars in full payment of amount advanced by us in payment of freight, as shown by expense bills listed below 1906, of T. & N. O. Railroad Company. The item for wharfage contained in said expense bill is an incorrect charge against the Sabine Tram Company, and said Company refuses to pay the same, and this is to show that we do not claim said item of wharfage against Sabine Tram Company, same being an erroneous charge against said Company.

W. A. POWELL CO., LTD.

W. A. POWELL, *Manager*,

Pro W. T. CALLON.

L. W.	5826	91.80
S. & E. W. T.	3532	72.00
H. & T. C.	408	70.65
L. W.	20032	98.70
F. S. W.	5447	117.60
L. W.	15704	78.60
T. N. O.	20861	211.65
M. S. T.	5106	
I. O.	97758	122.85
F. S. W.	5667	108.90
M.	21226	140.25
G. H. & S. A.	4198	179.25
L. W.	5327	
H. & T. C.	136	196.15
H. & T. C.	51	
S. P.	78600	123.60
M.	21117	136.80
S. A.	40250	117.45

1,856.25

For'd.	1,856.25
K. C. S.	25288 94.95
K. C. S.	24517 93.75
K. C. S.	21494 93.15
S. P.	55507 71.90
S. P.	55507 1.00
T. N. O.	3174 83.40
K. C. S.	36008 116.10
K. C. S.	25197 126.45
S. A.	1140 60.00
T. C.	3011 24.00
T. C.	3011 36.00
S. P.	59100 55.89
S. P.	59100 37.20
K. C. S.	24751 55.80
K. C. S.	24751 37.20
K. C. S.	21629 60.24
K. C. S.	25187 52.92
K. C. S.	21139 38.61
K. C. S.	21629 40.14
K. C. S.	21139 25.74

3,080.75

For'd.	3,080.75
K. C. S.	25187 35.28
T. & F. S.	21037 36.00
T. & F. S.	21037 24.00

\$3,156.03

P. 15. H.

316 Geo. W. Smyth, President; J. G. Smyth, Vice-Pres't; J. B. Smyth, Sec'y; Frank Alvey, Treas.

Manufacturers of Untapped Band-sawed Long-leaf Calcasieu Yellow Pine Lumber.

Office of Sabine Tram Company, Incorporated 1889.

Railroad Material a Specialty.

Paid-up Capital, Surplus & Undivided Profit, \$2,412,973.60.

C. E. Walden, Assistant Secretary.

Cable address, "Smyth."

All standard codes used.

Exporters via Port Arthur, Sabine Pass & Galveston.

All agreements made contingent upon strikes, fires, accidents or causes beyond our control.

Annual capacity of saw-mills, 100 million ft.; annual capacity of planing mills, 75 million ft.

BEAUMONT, TEX., December 18, 1906.

12, 19, '06.†

W. A. Powell Company, Limited, New Orleans, Louisiana.

GENTLEMEN: We beg herewith to enclose First National Bank draft No. 36785 on the State National Bank of New Orleans for \$730.87 in settlement of balance of freight due you on statement rendered by your letter of Nov. 22nd, also your Debit Memorandum of December 6th. We would thank you to sign and return the enclosed receipt for \$3,156.03 covered by our remittance of November 7th, for \$125.16, November 11th, for \$2,300.00 and December 18th for \$730.87, showing that we have paid you for freight only and that we are not in any way responsible for any wharfage shown on any of the Expense Bills and that our responsibility ceased entirely when we delivered the material to you at Sabine.

Please give this matter your immediate attention and oblige,

SABINE TRAM COMPANY,
By C. E. WALDEN.

C. W. D.

Enclosure.

P. 16. G. R. H.

[† In pencil in copy.]

317

Form 747.

8-05-100M
(Standard)*Freight Bill.*

SABINE, TEX., STATION, 9, 15, 1906.

Sabine Tram Company to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

Pro. No. 13649.	No. of pkgs	Articles	Weight	Rate	Freight	Ad- vances.
Date W. B. 9, 12.	Lbr.	58800	6	35.28	
W. B. No. L41						
Whose Car KCS.						
Car No. 25187.						
Consignor S. T. C.		ST & C				
Shipping Point ———.						
Wharfage					1.50	
					<hr/> 36.78	

Total to collect 105.62

[9/9/77]*

9/9/77†

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through the Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill or Bill of Lading attached.

J. L. Mc

[JOHN C.]* REYNOLDS, Jr., Agent,

Per — — —, Cashier.

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19,† 1906.

Freight \$ [Wharfage]* Rate ———.

Dr. ———.

Cr. [35.28]* 35.28†

Difference ———.

[* Erased in copy.]

[† In red ink in copy.]

318

Form 747.

8-05-100M
(Standard)

Freight Bill.

SABINE, TEX., STATION, 10/10, 1906.

W. A. Powell Co. to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

Pro. No. 13030.	No. of pkgs.	Articles	Weight.	Rate.	Freight.	Ad- vances.
Date W. B. 9-12	As billed				
W. B. No. L 41						
Whose Car KCS		Lumber				
Car No. 25187			58800	6	35.28	
Consignor STCo.		As corrected				
Shipping Point —.						
		Lumber	58800	15	83 20†	
					88 20	

Total to Collect —.

[9/9/77]*

9/9/77†

See Pro. # 12649 9/15

Bal due 52 92

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading.

J. L. Mc

[JOHN C.]* REYNOLDS, JR., Agent,

Per — —, Cashier.

Should be 47.92†

Goods must be removed within twenty-four hours after arrival.

[9]*

Expense bill rec'd 12/19,† 1906.

Freight \$ — Rate —.

Additional —.

Credit —.

Dr. —.
Cr. 52.92

Difference —.

[* Erased in copy.]

[† In red ink in copy.]

319

Form 747.

8-05-100M
(Standard)*Freight Bill.*

SABINE, TEX., STATION, 9, 18, 1906.

S/O Sabine Tram Company, Nfy. W. A. Powell Co., Ltd., to Texas
& New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff, Tex., via ———.

Pro. No. 12709.	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Date W. B. 9-16						
W. B. No. L-32.						
Whose Car T & F S		Rgh. Lbr.	40000	6	24 00	
Car No. 21037						
Consignor STCo.						
Shipping Point ———.						

24 00

Wfg. 1 50

Total to collect 25 50

9/7/76

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through the Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill or Bill of Lading attached.

J. L. Mc
[JOHN C.]* REYNOLDS, JR., Agent,
Per — —, Cashier.

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 11/6, 1906.

Freight \$24.00 Rate ———.

Dr. ———
Cr. 24.00

Difference ———.

[*Erased in copy.]

820

Form 747.

8-05-100M
(Standard)

Freight Bill.

SABINE, STATION, 10/10, 1906.

S/O Sabine Tram Company, Nfy. W. A. Powell Co., Ltd., to Texas
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

Pro. No. 18021.	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Date W. B. 9-10	As billed				
W. B. No. L-32						
Whose Car T F S		Lumber	40000	6	24 00	
Car No. 21037						
Consignor S & Co.		As corrected				
Shipping Point —.		Lumber	40000	15	60 00	

Total to collect —.

Bal due 36 00.

9/9/76

See Pro. # 12709 9/18.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through the Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill or Bill of Lading attached.

J. L. Mc

[JOHN C.]* REYNOLDS, JR., Agent,
Per — —, Cashier.

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12-18-1906.

Freight \$ — Rate —.

Dr. —

Cr. 36.00

Difference —.

Corrected Freight bill.†

[*Erased in copy.]

[†In red ink in copy.]

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 9/12, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to ———, and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of
322 the packages the published rate of the several carriers over whose lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly,

for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~§~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain

323 or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary coopeage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~ES~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that

324 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise,

failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

325 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to

sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

326 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to —.

Charges Advanced, \$—.


Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.....	One car rough lumber	
Sabine Texas.			
Notify W. A. Powell & Co.			

S. T. & C.

K. C. S. 25187.

Coal 60 car.

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Duplicate.

Port Arthur Route.

No. —

RULIFF, TEX., STATION —, 9/9, 1908.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — — —, and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over
328 whose lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employees.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly,

for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, 329 or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperation. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be

no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~13~~ Goods in bond subject to custom-house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignees to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

331 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

232 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.

Charges Advanced, \$———.

Consignee and marks.

No. pkgs. Description of article. Said to weigh—

Sabine Tram Co., Sabine, Texas. One car rough lumber

Notify W. A. Powell & Co., Ltd.

T. & Ft. S. 21037.

Flat 40 car. S. T. & C.

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

333

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

SABINE STATION, Oct. 10, 1906.

S/O Sabine Tram Co.—No'ty W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

Pro. No. 13022.	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Date W. B. 9/8	...	As billed				
W. B. No. N. 31	...	Lumber	66,900	6	40 14	
Whose Car KCS	...					
Car No. 211629						
Consignor S. & Co.						
Shipping Point ———		As corrected				
		Lumber✓	66,900	15✓	100 35✓	

9/8/77

See Pro 12611

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,

Per ———, Cashier.

Bal due ———.

Total to Collect 60 24.

C/S Houston B 2777.

Goods must be removed within twenty-four hours after arrival.

9.

Expense bill rec'd 12/19, 19-6.

Freight \$ ——— Rate ———.

Dr. ———.

Bal. due ———.

Cr. 6024.✓

Difference, ———.

534

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

SABINE, TX., STATION, 9, 12, 1906.

C/O Sabine Tram Co.—Ntly. W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co. Dr.

For charges on articles waybilled from Ruliff, via ———.

Pro. No. 12611.	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vance.
Date W. B. 9-8			✓	✓	✓	
W. B. No. L-31	...	Lbr.	66,900	6	40 14	
Whose Car KCS	...	S. T. & Co.				
Car No. 21629.						
Consignor S. T. Co.	...	Wharfage			1 50	
Shipping Point ———.						
9/8/77.						

Paid under protest.

41 64

Received payment for the Company — —, 190-.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per ———, Cashier.

Total to Collect ———.

Goods must be removed within twenty-four hours after arrival.

9

Expense bill rec'd 11/6, 19-6.

Freight \$ ——— Rate ———.

Dr. ———.

Cr. 40.14.

Difference, ———.

335

Form 403-10m-5-06. 12574.

Duplicate.

No. ———.

RULIFF, TEX., STATION, 9/18, 1906.

Port Arthur Route.

Received from Sabine Tram Company in Apparent Good Order
by Texarkana & Ft. Smith Railway Company, the following de-

scribed packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to ——— and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per earload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent over the marked capacity, and in case they are, this Company reserves the right to either assess double the earload rate on such excess or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than earload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of several carriers over whose
336 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgement on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~IF~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag

station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Casings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, 337 or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the afore-said form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~For~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination. 338

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

139 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part

at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.


340 19. This receipt and contract to be presented without alteration or erasure.

Rate Guaranteed to —.

Charges Advanced, \$—.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.,	..	One car	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.		rough lumber	
K. C. S., 21629		S. T. & Co.	
Flat 60 Cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Freight Bill.

SABINE STATION, Oct. 10, 1906.

S/O Sabine Tram Co.—Nfy. W. A. Powell & Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs	Articles	Weight	Rate	Freight	Ad vance
Pro. No. 13026.						
Date W. B. 9-11	..	As billed				
W. B. No. L-39						
Whose Car KCS						
Car No. 24751	..	Lumber	62000 [✓]	6	37 20	
Consignor S. T. Co.						
Shipping Point	..	As corrected				
10/11/77	..	Lumber	62000 [✓]	12 [✓]	93 00 [✓]	

See Pro. #12767.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — — —, Cashier.

Bal due

Total to Collect.... 55

Goods must be removed within twenty-four hours after arrival.

9

Expense bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 55.80.

Difference, — —.

Additional — —.

Ho C/S B 2781-10/6.

342

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P-20A.

SABINE STATION, 9, 21, 1906.

C/O Sabine Tram Co.—Ntfy. W. A. Powell Co. Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Date W. B. 9-11	...	Lbr.				
Pro. No. 12767.			✓	✓	✓	
W. B. No. L-39	...		62000	6	37 20	
Whose car. KCS	...	S. L. & C.				
Car No. 24751						
Consignor S. T. Co.						
Shipping Point ———.						

10/11/77.

Paid under protest.

Received payment for the Company ———, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per ———, Cashier.

	37 20
W'fage	1 50

Total to Collect....	38 70
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Goods must be removed within twenty-four hours after arrival.

12

Expense bill rec'd 12/19, 19-6.

Freight \$——, Rate ——.

Dr. ——.

Cr. 37.20.

Difference, ——.

343

Form 403-10m-5-06. 12574

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 9, 11, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
344 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are

noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for 145 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary coöperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the

production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~§~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
 346 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

347 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession

the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. of pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd.,			
Sabine, Texas.			
K C. S. 24751.			
Coal 60 cap.	S.T. & C.	

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

240

TEXAS & NEW ORLEANS RAILROAD CO. ET AL. VS.

340

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P-21-A.

SABINE STATION, Oct. 10, 1906.

S/O Sabine Tram Co.—Ntfy W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles	Weight	Rate	Freight	Ad- vances
13024						
Pro. No. 13024						
Date W. B. 9-15	..	As billed				
W. B. No. Ton 13.						
Whose car S. P.	..	Lumber	62100	6	37	28
Car No. 59100						
Consignor S. T. Co.		As Corrected				
Shipping Point —						
10/15/78	..	Lumber	62100	15	93	15

See pro. #12781.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,

Per — —, Cashier.

Bal. due

Total to Collect.... 55 89

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19,† 19-8.†

Freight \$ — —, Rate — —.

Freight \$ — —.

Dr. — —.

Cr. 55.89.†

Difference, — —.

Ho C/S B 2779 10/6.

[†In red ink in copy.]

250

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P-2-A.

SABINE STATION, 9, 22, 1906.

C/O Sabine Tram Co.—W. A. Powell Co.—to Texas & New Orleans
Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12781						
Date W. B. 9-15						
W. B. No. TON 13						
Whose car M	..	Lbr.	62100	6	37 26	
Car No. 29100						
Consignor S. T. Co.						
Shipping Point	..	Wharfage			1 50	
					<hr/> 38 76	

10/15/7+8.

[†In red ink in copy.]

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per W., *Cashier*.

Total to Collect ———.

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19/19-6.

Freight \$——, Rate ——.

Dr. ——.

Cr. 137.26 [is 37.26].†

Difference, √.

[†Word and figures enclosed in brackets in pencil in copy.]

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, — —, 190—.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
352 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~15~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.


8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for 352½ loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
553 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

354 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or per-

sonal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.


355 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to —.

Charges Advanced, \$—.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber, sq., &c.	
Notify W. A. Powell & Co., Ltd.,			
Sabine, Texas.			
S. P. 59100.			
Flat 60 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

P22a.

Freight Bill.

SABINE STATION, Oct. 10, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell & Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13025.						
Date W. B. 9-15		As billed				
W. B. No. TON 14						
Whose Car T. C.		Y. P. Lbr.	4000	6	24.00	
Car No. 3011						
Consignor St. Co.		As corrected				
Shipping Point —						
10/15/7+8		Lumber	40000	15	60 00	

[†In red ink in copy.]

See pro. #12782.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,

Per — —, Cashier.

Bal due

Total to Collect.... 36 00

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 36.00.

Difference, — —.

Ho C/S B 2780 10/6.

357

Form 747.

8-05-100M.
(Standard.)

P22a.

Freight Bill.

SABINE, TEX., STATION, 9, 22, 1906.

Sabine Tram Company to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12782.						
Date W. B. 9-15						
W. B. No. TON 14						
Whose Car T. C. . .		Y. P. Lum.	40000	$\frac{V}{6}$	24.00	
Car No. 3011						
Consignor S. T. Co..		Wharfage			1.50	
Shipping Point —.						
10/15/7+8						
					$\frac{V}{25.00}$	

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill or Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.
W.

Total to Collect —.

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ —, Rate —.

Dr. —.

Cr. 24.00.

Difference, —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 9/15, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
359 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indi-

rectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~§~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
360 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this

bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~§~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 361 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

362 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder;

provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

363 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd.,			
Sabine, Texas.			
Texas Central 3011.			
Coal 30 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

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TEXAS & NEW ORLEANS RAILROAD CO. ET AL. VS.

364

Form 747.

8-05-100M.
(Standard.)

P23a.

Freight Bill.

SABINE STATION, Oct. 10, 1906.

W. A. Powell & Co. to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

Pro. No.	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances
13023						
Date W. B. 9-7	..	As billed		✓ 0	25	✓ 74
W. B. No. TN 24	..	Lumber	42900			
Whose car KCS	..	As corrected				
Car No. 21139						
Consignor S. T. Co.	..	Lumber	42900	✓ 15	64	✓ 35
Shipping Point	—					
9/7/78						

See Pro. #12610.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,

Per — —, Cashier.

Bal due

Total to Collect.... 38.91

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. — —.

Bal due, 38 61.

Difference, — —.

Ho C/S B 2778 10/6.

Form 747.

8-05-100M.
(Standard.)

P23a.

Freight Bill.

SABINE, TEX., STATION, 9, 12, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell & Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12610.						
Date W. B. 9-7	..	Lbr.				
W. B. No. L-24	..	S. T. & C.	42900	6	25	74
Whose Car KCS						
Car No. 21139						
Consignor S. T. Co..		Wharfage			1	50
Shipping Point —.						
9/7/76						
					27	24

[†In red ink in copy.]

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.J. L. McREYNOLDS, Jr., Agent,
Per — — —, Cashier.

Total to Collect —.

Goods must be removed within twenty-four hours after arrival.

Freight bill rec'd 11/16, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 25.74.

Difference, — —.

Duplicate.†

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 9, 17, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
367 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of Equids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperation. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
369 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

370 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

371 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
K. C. S. 21139.			
Flat 60 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Freight Bill.
F24a.

SABINE, TEX., STATION, 10, 16, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12960.			✓			
Date W. B. 10/3	..	Lbr.	Min.			
W. B. No. T. & N. 2			40000	✓ 15	60	✓ 00
Whose Car SA	..	Wharfage			1	50
Car No. 1140						
Consignor S. T. Co.						
Shipping Point ———.						
10/3/80						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — — — —, Cashier.

Total to Collect.... 61 50

Goods must be removed within twenty-four hours after arrival.

Freight bill rec'd 12/19†, 19-8†.

Freight \$ — — Rate — —.

Dr. — —.

Cr. 60.00.†

Difference, — —.

[† In red ink in copy.]

373

Form 403-10m-5-06. 12574.

Duplicate.†

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 3, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk owners, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
374 lines the goods must pass to designation is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
375 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

378 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd., Sabine, Texas.			
G. H. & S. A. 1140.			
Flat 30 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

379

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P25a.

SABINE, TEX., STATION, 10, 6, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vanced.
Pro. No. 12961.						
Date W. B. 10/3						
W. B. No. T&N 3 ..		Lbr.	84300	15	126	45
Whose Car KCS						
Car No. 25197						
Consignor S. T. Co.						
Shipping Point ..		Wharfage			3	15
10/3†/80						

[† In red ink in copy.]

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — — —, Cashier.

Total to Collect. . \$129.60

Goods must be removed within twenty-four hours after arrival.

Freight bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 126.45.

Difference, — —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 3, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
381 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indi-

rectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to speculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary coöperation. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this

bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
S83 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, truckage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

384 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder;

provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

385 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
K. C. S. 23197.			
Flat 80 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

386

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P26a.

SABINE, TEX., STATION, 10/10, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12996.						
Date W. B. 10/15 ..		Lbr.	11400	15	116.10	
W. B. No. T. & N. 5						
Whose Car KCS						
Car No. 26008						
Consignors S. T. Co.						
Shipping Point ..		Wharfage			2.90	
10/4/80.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect... 119.00

Goods must be removed within twenty-four hours after arrival.

Freight bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 116.10.

Difference, — —.

Port Arthur Route.

No. —.

Duplicate.†

RULIFF, TEX., STATION, 10, 4, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are

(† In pencil in copy.)

noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
 389 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the

production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
390 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

391 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession

the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

392 19. This receipt and contract to be presented without alteration or erasure.

Rate Guaranteed to ———.
Charges Advanced, \$ ———.

Consignee and marks.	No. pkgs.	Description of article	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
K. C. S. 26008.			
Coal 80 Cap.	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

393

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

SABINE STATION, 10, 10, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12995.						
Date W. B. 10/5						
W. B. No. [Ford]*						
T. & N. 4						
Whose Car [Ford]*		Lbr.	55600 [✓]	15 [✓]	83 [✓]	40 [✓]
T. & N. O.						
Car No. 3174						
Consignor S. T. Co.		Wharfage			2	10
Shipping Point —.						
10/4/80						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — — —, Cashier.

Total to Collect. . . . 85.50

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/10, 1906.

Freight \$ — —, Rate — —.

Dr. — —,
Cr. 83.40.

Difference, — —.

[* Word enclosed in brackets erased in copy.]

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 4, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.


2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
395 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6.  The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
396 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
397 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

398 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

399 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ____.

Charges Advanced, \$ ____.

Consignee and marks.

No. pkgs.


Description of article. Said to weigh—

Sabine Tram Co.
 Sabine, Texas.
 Notify W. A. Powell & Co., Ltd.
 T. & N. O. 3174.
 Flat 50 cap.

One car rough lumber.

S. T. & C.

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Freight Bill.

P28a.

SABINE STATION, 10, 9, 1906.

Sabine Tram Company to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vance.
Pro. No. 12981.						
Date W. B. 10/2	...	Rg. L. Lbr.	48600	15	71 90	
					Should be	72.90†

[†In red ink in copy.]

W. B. No. L. 5.
 Whose Car S. P.
 Car No. 55507 ... Wharfage 1 82
 Consignor S. T. Co.
 Shipping Point —.
 10/6/603

74.72

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
 Per — —, Cashier.

Total to Collect . . . 73.72

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/18, 19-6.

Freight \$ —, Rate —.

Dr. —.

Cr. 71.90.

Difference —.

401

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P28a.

SABINE STATION, Oct. 16, 1906.

Sabine Tram Co. to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vance.
Pro. No. 13074.						
Date W. B. 10-2 ..	As billed		48600 [✓]	15	71 [✓]	90
W. B. No. L 5 ..	Lumber					
Whose Car S. P.						
Car No. 55507						
Consignor S. T. Co.	As corrected					
Shipping Point —						
		Lumber	48600 [✓]	15	72 [✓]	90
Bal due					1.00 [✓]	

See pro. #12981.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — —, Cashier.

Total to Collect.... 1.00

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/18, 1906.

Freight \$ — —, Rate, — —.

Dr. — —.

Cr. 1.00.

Difference, — —.

Ho C/S=B 2862 10/9.

Port Arthur Route.

No. —.

Duplicate.

RULIFF, TEX., STATION, 10, 2, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
403 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
404 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to speculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~12.~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
405 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

406 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh
Sabine Tram Co.	One car rough lumber.	
Sabine, Tex.†			
[Bolivar Point],* Texas.			
S. P. 55507	Marked sizes 283.	
Flat 60 cap.	S. T. & C.	
R/C 500†			
E. P. H. 6758†			

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

[*Erased in copy.]

[†In red ink in copy.]

408

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P29a.

SABINE, TEX., STATION, 10, 10, 1906.

S/O Sabine Tram Co.—Ntfy W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12997.						
Date W. B. 10-5						
T. & N. O.						
W. B. No. [For]* 6						
Whose Car KCS		Lbr.	62100	15	93	15
Car No. 21494						
Consignor S. Y. Co.						
Shipping Point		Wharfage			2	33
10/5/80						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per — —, *Cashier*.

Total to Collect.... 95 45

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 93.15.

Difference, — —.

409

Form 403-10m-5-06. 12574.

Dpuplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 5, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
410 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indi-

rectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
411 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperation. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this

bill of lading, or for or on account of any assignment or transfer thereof.

12. Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder;

provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ——.
 Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
K. C. S. 21494.			
Flat 60 cap.	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

115

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P30a.

SABINE, TEX., STATION, 10, 10, 1906.

S/O Sabine Tram Co.—May. W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff, Tex., via. —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 12998						
Date W. B. 10/6						
W. B. No. For 8						
Whose Car KCS	..	Lbr.	62500	15	93	75
Car No. 24517						
Consignor S. T. Co.						
Shipping Point —.						
10/6/18	..	Wharfage			2	35

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — —, Cashier.

Total to Collect.... 96.10

Goods must be removed within twenty-four hours after arrival.
Expense bill rec'd 12/*190—.

Freight \$ — —, Rate — —,
Dr. — —,
Cr. 93.75.

Difference, — —.

[*In red ink in copy.]

416

Form 403-10-m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 6, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
417 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "owner's risk" or the letters O. R. are noted on this bill of lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "loaded by shipper" or "shipper's count" are noted on this Bill of Lading, it is an acknowledgment on the part

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~13~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for
418 loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
419 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice of application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

420 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby

authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

421 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co., Sabine, Texas	One car rough lumber.	
Notify W. A. Powell & Co.			
K. C. S. 24517.			
Coal 60 cap.	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

422

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P31a.

SABINE STATION, Oct. 13, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled Ruliff via ———.

	No of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13054.						
Date W. B. 10-9						
W. B. No. TON 8						
Whose Car KCB						
Car No. 25288		Rfg. Lumber	63300	15	94 95	
Consignor S. T. Co.						
Shipping Point ———.						
10/8/81.		Wharfage			2 35	

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates,* with this Freight Bill and Original Bill of Lading attached.

L. J. McREYNOLDS, Jr., Agent.
Per ———, Cashier.

Total to Collect... 97 30

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ ———, Rate ———.

Dr. ———.

Cr. 94.95.

Difference, ———.

423

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/8, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.


2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
424 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employees.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6.  The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to speculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
426 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

427 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

428 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd., Sabine, Texas.			
K. C. S. 25288.....	S. T. & C.	
Coal 80 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

429

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P32a.

SABINE STATION, Oct. 16, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13072.						
Date W. B. 10-11.						
W. B. No. TON 10.						
Whose Car SA.						
Car No. 40259.						
Consignor S. T. Co.						
Shipping Point						
		Lumber	78300	✓ 15	✓ 117.45	
		R S L P		Y		
		Wharfage			2 95	
10/11/81.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — —, Cashier.

Total to Collect. . . . 120.40

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.
Cr. 117.45.

Difference, — —.

430

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/11, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
431 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ⁴³³ Goods in bond subject to custom house regulations and charges.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

⁴³⁴ 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to _____
Charges Advanced, \$_____.

Consignee and marks.	No. of pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.,			
A. H. & S. A. 40259.	S. T. & C.	
Coal 60 car.			

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

486

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P33a.

SABINE STATION, Oct. 15, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances
Pro. No. 13068.						
Date W. B. 10-11.						
W. B. No. Ton 9.						
Whose Car M.						
Car No. 21117		Lumber	91200	15	136.80	
Consignor S. T. Co.		R				
Shipping Point ———		Wahrfage			3 42	
10/11/81.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — —, Cashier.

Total to Collect... 140.22

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19†, 1906†.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 136.80†.

Difference, — —.

† In red ink in copy.]

437

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/11, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
438 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~6.~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss
439 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~12.~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
440 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

441 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

harchy authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

442 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$ ———.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co.			
M. L. & T. 21117....	S. T. & C.	
Flat 100 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

448

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P34a.

SABINE STATION, Oct. 29, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co., Ltd.—to Texas &
New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13164.					
Date W B. 10-15	Rgh. Lumber	78400	15	117 60	
W. B. No. Ton-12.					
Whose Car Ft. S. & W.	Wharfage				2 95
Car No. 5447.					
Consignor S. T. C.					
Shipping Point, Ruliff, Texas.					
10/13/82.					

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect.... 120.55

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ —, Rate —.

Dr. —.

Cr. 117.60.

Difference, —.

444

Form 403-10m-5-08. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/15, 1908.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
445 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~6.~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss
446 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill

of lading, or for or on account of any assignment or transfer thereof.

12. ~~12.~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only
447 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignees to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

448 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest

holder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd., Sabine, Texas.			
Ft. S. & W. 5447....	S. T. & C.	
Coal 80 cap.			

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

450

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P35a.

SABINE STATION, Oct. 29, 1906.

Sabine Tram Co.—Ntly. W. A. Powell Co., Ltd., Sabine, Texas—
to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13165.						
Date W. B. 10-15.		Rgh. Lumber	52400	15	78 60	
W. B. No. TON 13.						
Whose Car LW.						
Car No. 15704.		Wharfage			1 95	
Consignor S. T. Co.						
Shipping Point, Ruliff, Texas.				Y		
10/13/81.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — —, Cashier.

Total to Collect.... 80.55

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 78.60.

Difference, — —.

451

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/15, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
452 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss

453 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 454 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

455 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.


456 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to —.

Charges Advanced, \$—.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.,			
L. W. 15754.....	S. T. & C.	
Coal 50 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

457

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P36a.

SABINE STATION, Oct. 26, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13140.						
Date W. B. 10-16.		Rgh. Lumber	82400	15	123.60	
W. B. No. Ton 16.						
Whose Car SP.		Wharfage			3.10	
Car No. 78809.						
Consignor S. T. Co.						
Shipping Point —.				Y		
10/17/82.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss of damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect.... 126.70

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/18, 1906.

Freight \$ — —, Rate — —.

Dr. — —.
Cr. 123.60.

Difference, — —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/16, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
459 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~The~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of 400 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ¹² Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 401 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consigned shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

402 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

463 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$———.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Babine Tram Co.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd. Babine, Texas. B. P. 78809.....	S. T. & Co.	
Flat 80 cap.			

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

464

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P37a.

SABINE STATION, Oct. 27, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13154.						
Date W. B. 10-15		Rgh. Lumber	72600	15	108	90
W. B. No. Ton 15.						
Whose Car Ft. W. S.						
Car No. 5667		Wharfage			2.70	
Consignor S. T. Co.						
Shipping Point —.						
10/22/82.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per — —, *Cashier*.

Total to Collect.... 111.60

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 108.90.

Difference, — —.

465

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/13, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
466 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~15~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss
467 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~12.~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 468 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignees to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

469 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.


470 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to —.

Charges Advanced, \$—.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
Ft. S. & W. 5667.	S. T. & C.	
Coal 80 cap.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P. 37a.

SABINE STATION, Oct. 20, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13101.						
Date W. B. 10-15.						
W. B. No. Ton 14.						
Whose Car LW.						
Car No. 5826.		Rfg. Lumber	61200	15	91.80	
Consignor S. T. Co.						
Shipping Point —.		Wharfage			2.30	
10/17/82.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per — —, *Cashier*.

Total to Collect.... 94.10

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/18, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 91.80.

Difference, — —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/15, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
473 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employees.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations and sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss

9. of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

10. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

11. All property will be subject to necessary cooerage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of This Contract.

12. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~12.~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 475 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention, of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

476 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

Company authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$ ———.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co. Sabine, Texas.	One car rough lumber.	
Notify W. A. Powell & Co., Ltd. L. W. 5826.....	S. T. & C.	
Flat 60 cap.			

D. C. ROOT, Agent.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

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Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P39a.

SABINE STATION, Oct. 21, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New
Orleans Railroad Co., Dr.

For charges on articles waybilled Ruliff via —.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13109.						
Date W. B. 10-18.						
W. B. No. TON 24		} Twin.*				
Whose Car HTC 136		} Rgh. Lumber	124100	15	186.15	
Car No. Twin		{ HTC 51.				
		{ S. T. Co.				
Consigner —						✓
Shipping Point —		Wharfage				4 65
10/18/82.						

[* In red ink.]

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the
General Freight Agent, through this Company's local agent or rep-
resentative at the point where claim originates, with this Freight
Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect.... 190.80

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/18, 1906.

Freight \$ —, Rate —,

Dr. —,

Cr. 186.15.

Difference, —.

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/18, 1906.

Received from Sabine Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
480 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~5~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss
481 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~For~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

484 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co.	Two cars rough lumber.	
Notify W. A. Powell & Co., Ltd. Sabine, Texas.			
H. & T. C. 136 #60 Flat.			
H. & T. Co. 51 60 Flat	S. T. & C.	
Twin load cars must not be uncoupled.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P40a.

SABINE STATION, Oct. 24, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —,

No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
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Pro. No. 13125.

Date W. B. 10-19.

W. B. No. Ton 25.*

Whose Car GHSA 4198.* 2 Cars Rgh.

Car No. LW 5327.*

Consignor S. T. Co.

Shipping Point —.

10/19/82.

Lumber	119500	✓ 15	✓ 179.25
Wharfage			4.45

* Twin.

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect.... 183.70

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ —, Rate —.

Dr. —.

Cr. 179.25.

Difference, —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10/19, 1906.

Received from Sabino Tram Company In Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
487 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of This Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the

carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated.

It is, however, further understood and agreed that only 489 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

490 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper

hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

491 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co.	Two cars rough lumber.	
Notify W. A. Powell & Co., Ltd.,			
Sabine Tram Co.			
G. H. & S. A. 4198, 60 Flat.			
L. W. 5327, 60 Flat.	S. T. & C.	
Twin load—must not be uncoupled.			

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

492

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P41a.

SABINE STATION, Oct. 24, 1906.

Sabine Tram Co. to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

	No. of pkgs	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13126						
Date W. B. 10-21						
W. B. No. Ton 26 .. Rgh. Lumber			93500	15	140	25
Whose Car M						
Car No. 21226						
Consignor S. T. Co.		Wharfage				3 50
Shipping Point —.						
10/20/82						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — — —, Cashier.

Total to Collect.. 143.75

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 140.25.

Difference, — —.

493

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 22, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
494 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~6.~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss

495 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of this Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12. ~~ES~~ Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that 496 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

497 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose pos-

session the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.


498 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.

Charges Advanced, \$———.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co., Sabine, Texas. . . .		One car rough lumber.	
Notify W. A. Powell & Co., Ltd. M. L. & T. 21226.			
Fiat 100 Cap.	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

Form 747.

8-05-100M.
(Standard.)

Freight Bill.

P42a.

SABINE STATION, Oct. 26, 1906.

S/O Sabine Tram Co.—Ntly. W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

No of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13141					
Date W. B. 10-22					
W. B. No. Ton 27					
Whose Car IC	.. Rgh. Lumber	81900 [✓]	15 [✓]	122 [✓]	85
Car No. 97758					
Consignor S. T. Co.	Wahrfage			3 [✓]	05
Shipping Point —.					
10-22-83					

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, Jr., Agent,
Per — —, Cashier.

Total to Collect.. 125.90[✓]

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 122.85.

Difference, — —.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 22, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.


2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
501 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose line the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employees.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6.  The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of this Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that

503 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

504 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose pos-

session the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

505 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. of pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
I. C. R. R. 97758.			
Coal 80 cnp.....	S. Tr. Co.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

506

Form 747.

8-05-100M.
(Standard.)

P43a.

Freight Bill.

SABINE STATION, Oct. 27, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell Co.—to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13155						
Date W. B. 10-25						
W. B. No. Ton 28		Twin Car				
Whose Car T&NO		2 Cars Rgh.				
20361						
Twin Car No. MLT 5105		Lumber	141100	15	211 65	
Consignor St. Co.		Wharfage			5 30	
Shipping Point ———.						
10/24/83						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per — — —, Cashier.

Total to Collect.. 216.95

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 1906.

Freight, \$ — —, Rate — —.

Dr. — —.
Cr. 211.65.

Difference, — —.

507

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 21, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company; and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
508 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. ~~For~~ The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss
509 of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to speculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Original—Read the Conditions of this Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery

the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that
510 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for
loss or damage.

511 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose pos-

session the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

512 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ——.
 Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	Two cars rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
T. & N. O. 20361—80 Flat.			
M. L. & T. 5105—60 Flat.			
Twin load—must not be uncoupled	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

513

Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P44a.

SABINE STATION, Oct. 30, 1906.

S/O Sabine Tram Co.—Ntfy. W. A. Powell & Co., Sabine, Texas.—
to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff, Texas, via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13182						
Date W. B. 10-25						
W. B. No. Ton 29		Rgh. Lumber	48000	15	72	00
Whose Car H. E. & W. T.						
Car No. 3532						
Consignor S. T.		Wharfage			1	80
Shipping Point Ruliff.						
10/26/83						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per — — —, *Cahsier*.

Total to Collect. . 73.80

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$ — —, Rate — —.

Dr. — —.

Cr. 72.00.

Difference, — —.

514

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 10, 26, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the

part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6. The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts

[Page of copy omitted here.—PRINTER.]

516 approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering

carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

517 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.

18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

518 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to —.

Charges Advanced, \$—.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh.
Sabine Tram Co., Sabine, Texas.	...	One car rough lumber.	
Notify W. A. Powell & Co., Ltd, H. E. & W. T. 3532.			
Coal 60 cap.....	S. T. & Co.	

D. C. ROOT, *Agent*.

Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

519 Form 747.

8-05-100M.
(Standard.)*Freight Bill.*

P45a.

SABINE STATION, Nov. 3, 1906.

S/O Ntfy. W. A. Powell Co., Ltd., Sabine, Tex., to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via —.

No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13223					
Date W. B. 11/1	Rgh. Lumber	47 [✓] 100	15 [✓]	70 [✓]	65
W. B. No. TON 1					
Whose Car H&TC					
Car No. 403	Wharfage			1	75
Consignor S. T. Co.					
Shipping Point Ruliff.					
10/31/84					

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or rep-

representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., Agent,
Per ———, Cashier.

Total to Collect.. 72.40

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$——, Rate ——.

Dr. ——.

Cr. 70.65.

Difference, ——.

520

Form 403-10m-5-06. 12574.

Duplicate.

Port Arthur Route.

No. —.

RULIFF, TEX., STATION, 11, 1, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and


risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
521 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6.  The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.

8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of
522 weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.


9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to peculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton

in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of this Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that

523 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same, for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for

freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

524 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place, and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

525 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ———.
Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co.	One car rough lumber.	
Sabine, Texas.			
Notify W. A. Powell & Co., Ltd.			
H. & T. C. 403.			
Flat 60 cap.....	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

526

Form 747.

8-05-100M.
(Standard.)

P46a.

Freight Bill.

SABINE STATION, Nov. 5, 1906.

S/O Ntfy. W. A. Powell Co., Ltd., Sabine, Tex., to Texas & New Orleans Railroad Co., Dr.

For charges on articles waybilled from Ruliff via ———.

	No. of pkgs.	Articles.	Weight.	Rate.	Freight.	Ad- vances.
Pro. No. 13237						
Date W. B. 11-2						
W. B. No. Ton 2		Rgh. Lumber	65800	15	98 70	
Whose Car LW						
Car No. 20032		Wharfage			2 50	
Consignor S. T. Co.						
Shipping Point Ruliff.						
11/1/85.						

Paid under protest.

Received payment for the Company — —, 190—.

Claims for overcharge and loss or damage must be sent to the General Freight Agent, through this Company's local agent or rep-

representative at the point where claim originates, with this Freight Bill and Original Bill of Lading attached.

J. L. McREYNOLDS, JR., *Agent*,
Per ———, *Cahsier*.

Total to Collect.. 101.20

Goods must be removed within twenty-four hours after arrival.

Expense bill rec'd 12/19, 19-6.

Freight \$——, Rate ——.

Dr. ——.

Cr. 98.70.

Difference, ——.

527

Form 403-10m-5-06. 12574.

Port Arthur Route.

No. —.

Duplicate.

RULIFF, TEX., STATION, 11, 2, 1906.

Received from Sabine Tram Company in Apparent Good Order by Texarkana & Ft. Smith Railway Company, the following described packages (contents and value unknown, except as given by shipper below) marked and numbered as per margin, subject to the conditions and regulations of the published tariff of said Company, to be transported over the line of this railway to — and delivered, after payment of freight and advanced charges in like good order to the consignee or party in whose care they are consigned, or a connecting carrier, (if the same are to be forwarded beyond the line of this Company's road,) to be carried to the place of destination, it being expressly agreed that the responsibility of this Company shall not extend beyond its own line and that it shall not be liable for any loss, damage or injury to said property caused by the negligence of any other common carrier, railroad or transportation company, to which said property may be delivered, or over whose lines it may pass, subject to the following conditions:

1. When the rate herein guaranteed is in dollars and cents per carload, it is understood that such rate is to be applied on weight up to the maximum as provided in the issues of this Company, and that all weight in excess of such maximum up to 10 per cent. over the marked capacity of the car will be charged for proportionately. Cars must not in any case be loaded in excess of 10 per cent. over the marked capacity, and in case they are, this Company reserves


the right to either assess double the carload rate on such excess, or to unload and reload the same in another car at the expense and risk of owner, in which case the regular less than carload rate will be charged.

2. When the contents of packages are not properly represented by shippers, it is stipulated that upon the actual contents of the packages the published rate of the several carriers over whose
528 lines the goods must pass to destination is the only rate guaranteed.

3. Freight passing beyond the line will be subject to classification rules and conditions of the several carriers over whose lines the goods must pass to destination.

4. When the words "Owner's Risk" or the letters O. R. are noted on this Bill of Lading the shippers assume the risk of all damages to the property in the course of transportation, except such as arise from carelessness or neglect of the carrier's agents or employes.

5. When the words "Loaded by Shipper" or "Shipper's Count" are noted on this Bill of Lading, it is an acknowledgment on the part of shipper that railroad companies are not liable, directly or indirectly, for damages arising from improper stowage or insufficient packages or by any discrepancy in count or quantity.

6.  The owner or consignee to pay freight charges as per specified rates upon the goods as they arrive.

7. Shipments for transportation to flag stations (that is, stations or sidings having no freight agents) will be received as a matter of convenience to the shipping public adjacent to such flag stations, only when all freight charges are Prepaid and with the further understanding that such shipments will be entirely at the risk of the owner or consignee after being unloaded from the car at such flag station. If in car loads, the freight will be placed on the siding entirely at the risk of the owner or consignee after being so placed.


8. This Company shall not be responsible for the loss of packages the contents of which are unknown, for leakage of any kind of liquids, breakage or chafing of any kind of Glass, Earthenware or Queensware, Carboys of Acids or articles packed in Glass, Stoves or Stove Furniture, Castings, Machinery, Marble Slabs, Carriages, Furniture, Picture Frames, Musical Instruments of any kind, Packages of Eggs or for loss or damage on Hay, Cotton, Hemp, or any article whose bulk renders it necessary to transport in open cars or for damage to perishable property of any kind, occasioned by delay from any cause or change of weather, nor for any loss of
529 weight of grain or Coffee in Bags, Rice in tierces, nor for loss of nuts in Bags, or Lemons or Oranges in boxes not covered by Canvas, or for damage or loss by Fire, unless it be shown that such damage or loss occurred through negligence or default of the Agents of the Company.

9. Cases or packages of Boots, Shoes, Tobacco and other articles liable to speculation or fraudulent abstraction, must be strapped with iron or wood, or otherwise securely protected, or the Company will not be responsible for diminution of the original contents.

10. All property will be subject to necessary cooperage. Carriers will not be accountable for loss in Weight of Flour, Grain, Seeds, Feathers, or other goods, arising from unavoidable causes. Cotton in bales is at the owner's risk of wet or dirt. Shipments of household goods and emigrant movables are in all cases subject to the provisions of the ruling tariff and classification as to liability of the carrier.

Duplicate—Read the Conditions of this Contract.

11. If the word "order" is written hereon immediately before or after the name of the party to whose order the property is consigned without any condition or limitation other than a name of a party to be notified of the arrival of the property, the surrender of this bill of lading, properly endorsed, shall be required before the delivery of the property at destination. If any other than the aforesaid form of consignment is used herein, the said property may, at the option of the carrier, be delivered without requiring the production or surrender of this bill of lading. After such delivery the carrier shall be no longer responsible for or on account of this bill of lading, or for or on account of any assignment or transfer thereof.

12.  Goods in bond subject to custom house regulations and expenses.

13. The rate of freight for transportation of the articles named herein from place of shipment to place consigned is guaranteed not to exceed the rate named herein and charges advanced provided contents and weights of packages as noted herein are correctly stated. It is, however, further understood and agreed that
530 only approximate weights are signed for, the correct weights and classifications to be ascertained and collected for at destination.

14. It is agreed by the parties hereto, both the carrier consignor and consignee, that this contract shall be deemed executed and accomplished and the liabilities of the companies transferring freight hereunder as common carriers shall terminate as to the forwarding carriers respectively on delivery to the next connecting carrier, and as to the delivering carrier on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only. It is further agreed that the consignee shall receive and take away all freight received and transported hereunder within twenty-four hours after its arrival at destination, and that if freight is not so received and removed, the delivering carrier shall be entitled to charge and collect on same,

for each day and fraction thereof that said freight remains in possession of the carrier after the expiration of said twenty-four hours, in accordance with the rates, rules and regulations of such delivering carrier for demurrage, trackage, rental or storage, the amount so charged being agreed upon as liquidated and reasonable damages, for the daily detention of such car and use of track on carloads, and on smaller lots a reasonable amount for storage, and it is further agreed that for any amount so accruing to such delivering carrier the latter shall have a lien on the freight, in addition to and of the same nature as a common carrier's common law lien for freight charges, and may enforce it in the same way as the latter can be enforced, by detention of the freight or otherwise; it is further agreed that all claims for loss and damage to freight transported hereunder shall be made in writing by consignors or consignee to the Auditor of this Company, or the station agent of the delivering company at the point of destination within five days of its arrival there, and that if such notice or application is not so given or made, this Company shall not be held liable for any loss or damage to said freight, whether same is occasioned by the negligence or fault of this Company or otherwise, failure to give such notice being deemed a waiver and surrender of any such claim for loss or damage.

531 15. The shipper further agrees that, if for any cause consignee fails to receive and remove and pay all legal charges of this shipment within five days after its arrival at destination, the Railroad Company above named or the company in whose possession the shipment then is, shall have the right and the shipper hereby authorizes it, to sell the same at public auction to the highest bidder; provided a telegram shall have been sent to the shipper shown herein at the point of shipment, giving notice of such intent to sell or personal notice thereof given to him at point of destination at least five days before such sale takes place and provided that within five days and before the property is sold, the shipper, consignee or person entitled to the possession thereof shall not have paid all charges due thereon and received and removed the same. The proceeds of such sale after deducting carrier's, warehouse and demurrage charges and expenses of sale shall be paid to the owner of the property on proper proof of his right thereto. If, in the opinion of the delivering carrier the shipment or any part thereof will probably spoil before five days elapse, then it may sell such part at once, using reasonable effort to sell at best advantage, the proceeds to be used and held as above provided.

16. In the event of loss of freight transported under this contract, for which this Company shall be liable, the extent of its liability shall be limited by the value or cost of such freight at the point of shipment, and the Company shall be entitled to the benefit of any insurance effected thereon by or on account of the owner.

17. It is also agreed that the terms and conditions of this contract shall inure to the benefit of all carriers transporting the freight

shipped hereunder, unless they otherwise stipulate, and that in no case shall one carrier be liable for the negligence of another.


18. In accepting this contract, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all of its stipulations and conditions.

532 19. This receipt and contract to be presented without alteration or erasure.

Rate guaranteed to ——.
 Charges Advanced, \$——.

Consignee and marks.	No. pkgs.	Description of article.	Said to weigh—
Sabine Tram Co., Sabine, Texas. . . .		One car rough lumber.	
Notify W. A. Powell & Co., Ltd.			
— 0032.			
— cap.....	S. T. & C.	

D. C. ROOT, Agent.

 Note provisions above as to charges for trackage and delay of cars, and as to presenting claims for loss or damage.

Shippers will take notice that when goods are consigned "to order" the name and address of some party or parties at point of destination to whom notice of arrival may be sent, must be given.

533 Office of Railroad Commission of Texas.

Circular No. 1169.

Rates on Lumber from Milling Points on the Southern Division of the Texarkana & Fort Smith Railway.

General Notice, Circular No. 1160, Hearing July 21, 1900.

AUSTIN, TEXAS, July 23, 1900.

It is hereby ordered that the following rates be adopted for the transportation of lumber, and articles taking lumber rates, in car loads, minimum weight 24,000 pounds per car, from points on the Texarkana & Fort Smith Railway, north of Beaumont to the Sabine River, to points specified below:

Rates.

To Beaumont, Port Arthur, Sabine Pass, four (4) cents per 100 pounds.

To stations south of Houston on the Gulf, Colorado & Santa Fe Railway, the Galveston, Houston & Henderson Railroad, and the

Galveston, Houston & Northern Railway, except Galveston, eight and three-fourth ($8\frac{3}{4}$) cents per 100 pounds.

To all stations on the Missouri, Kansas & Texas Railway of Texas (except Trinity & Sabine branch), same rates apply from Beaumont to such stations.

This order shall take effect August 13, 1900.

Attest:

JOHN H. REAGAN, *Chairman*;
ALLISON MAYFIELD,
Commissioners.

E. R. McLEAN, *Secretary.*

I hereby certify that the above is a true and correct copy of Circular No. 1169, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 23rd day of July, 1900.

E. R. McLEAN, *Secretary.*

#48 H.

534 Galveston, Harrisburg & San Antonio Railway Company.

Texas & New Orleans Railroad Company.

Louisiana Western Extension Railroad Company.

C. K. Dunlap, General Freight Agent.

H. C. Reese, Ass't Gen'l Freight Agent.

HOUSTON, TEXAS, April 5, 1902.

Mr. John H. Reagan, Chairman R. R. Commission, Austin, Texas.

DEAR SIR: It is my desire to make re-adjustment of rates on lumber between T. & N. O. R. R. Stations (within the lumber-producing district) to the following figures, viz: For distances

10 miles and less.....	3½¢
Over 10 to 15 miles.....	4¢
Over 15 to 30.....	4½¢
Over 30 to 51.....	5¢
Over 51 to 74.....	6¢
Over 74 to 101.....	7½¢
Over 101 to 180 miles.....	8¢

You will note by reference to current tariff this will, in some cases, increase and in some cases reduce the present rates, and as the scale is lower than is being applied by other lines in that territory trust you will authorize. (It is also my desire to make exception to application of these rates to Sabine and Sabine Pass, rates to those points

being necessary to meet water competition and accommodate export trade.)

The lumber district embraces all stations on T. & N. O. main line, Stilson and east, and Sabine division north as far as Mahl, Texas.

Yours truly,

C. K. DUNLAP.
B.

I, E. R. McLean, Secretary of the Railroad Commission of Texas, do hereby certify that the above is a true and correct copy of a letter addressed to Mr. John H. Reagan, Chairman R. R. Commission Austin, Texas, of date April 5, 1902, signed by C. K. Dunlap, and now on file in this office.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 22nd day of October, 1907.

E. R. McLEAN,
Secretary Railroad Commission of Texas.

P. 49 H.

Glass, Estes & King, Attorneys at Law.

Hiram Glass.
W. L. Estes.
John J. King.
A. L. Burford.

TEXARKANA, TEXAS, October 25, 1907.

Messrs. Greer, Minor & Miller, Attorneys-at-Law, Beaumont, Texas.

GENTLEMEN: Referring to conversation had with your Mr. Greer whilst at Beaumont on Tuesday, beg to say that I will agree that either party to the suit may use the Fifteenth Annual Report of the Railroad Commission for the Year 1906; and further agree that all of the rates, orders, etc. issued by the Railroad Commission of Texas and appearing on page 184 of said report were transmitted by said Commission and delivered to the proper officers and agents of the Texarkana & Ft. Smith Railway Co.

And I will further agree that said Annual Report of the Railroad Commission of Texas, or any part of same, may be introduced and used in evidence by either party, to either of the suits by the Sabine Tram Company vs. the T. & F. S. Ry. and the T. & F. S. Ry. and the T. & N. O. R. R. Co., the same as certified copies of said orders under the hand and seal of the Secretary of said Commission might be used.

That is, that the orders as they appear in said Annual Report shall have all the force and effect and may be introduced in evidence, as though they were certified copies from the Secretary of said Commission. The object being to avoid the expense and trouble of procuring certified copies, and of relieving either party to the suit of the necessity of showing by other proof that the railway companies had notice of such orders, tariffs and rates within

375

a reasonable time after the same were issued, and prior to the dates of the shipments mentioned in plaintiff's several petitions.

Please write me, c/o Crosby Hotel, Beaumont, if you join in the above agreement.

Yours truly,

HIRAM GLASS.

H. G.-H.

#47 P.

3
7
6

FORT ARTHUR ROUTE

Texarkana & Fort Smith Railway Company

WAY BILL FOR FREIGHT FROM *Reuliff, Tex.* TO *Beaumont, Tex.*

The use of this Way Bill is positively prohibited.
If any changes are made in this way bill, such changes must be stated hereon.

1 VIA	2 VIA	3 VIA	4 VIA	5 VIA
SECTION WITH	SECTION WITH	SECTION WITH	SECTION WITH	SECTION WITH
Length of Car	ft.	ft.	ft.	ft.
Marked Capacity of Car	Lbs.	Lbs.	Lbs.	Lbs.
Weight this Car at	Lbs.			
Stop this Car at	Lbs.			
Loaded at	a'clock M. Date			

Car No. *25187* Car No. *ACS*

No. No. No.

No. No. No.

No. No. No.

SHIPPER	MARKS, COMMER AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITION (O.R., C.R., Ref., Gen., Rec.)	WEIGHT	RATE AND AMOUNT	FREIGHT CHARGES	ADVANCE	PREPAID	PREPAID
<i>S. E. P.</i>	<i>Saline Iron Co.</i>		<i>Rgh. Lh.</i>						
	<i>Saline</i>		<i>Lysol</i>	<i>40 000</i>	<i>9</i>	<i>12 00</i>			
	<i>Texas</i>		<i>Ext port to Europe</i>	<i>38 800</i>	<i>4</i>	<i>25 28</i>			
				<i>15 25</i>	<i>10</i>				
				<i>15 00</i>	<i>5</i>				
					<i>15</i>	<i>88 20</i>			
<div> <p>Agents Correction Sheet no <i>3278</i></p> <p>Auditors Correction Sheet no <i>106196</i></p> </div>				<div> <p><i>Reading changed to Beaumont</i></p> <p><i>9/14</i></p> <p><i>J. J. Derraf</i></p> </div>					

Forwarded at Beaumont, Tex. 9/14/06

By

866

272

588

Beaumont, Tex.

9/14/06

Weight of Car and Contents	If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.	Forwarding Agent will be held responsible for any loss or charges that may occur by failure to comply with these instructions.	3	4	5	6
					<i>9/15</i>	

RECEIVED

SEP 15 1906

15

1906

RECEIVED

SEP 15 1906

15

1906



Date 9/10 1906 Station 32
 Name James TO Benjamin
 No. 1037 1074 TRANSFERRE
 On 10/10 1074 1074 1074

For Additional Charges see:

W. B. No.

1982

0-142-740

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26



100

MARKS, CONSIGNEE AND DESTINATION:

No. of

ARTICLES AND CLASSIFICATION
CONDITIONS: 98-99, 91, 94, 97, 99

Wages

* RATE AND ACTIVITY

FREIGHT CHARGES

ADVANCES

INDEX

[Handwritten notes on lined paper:]

S L Co.

*Box 564
Fall 278
Nov 325*

*Shaded as background
on cover 2000*

St Sabine Tenn
Notify
W A Cowley Co
Sabine Tenn

Ed. L. L.

4000	3	1200
8000	6	2400
12000	9	3600
16000	12	4800
20000	15	6000

12709 Interstate
Export to
Europe

Kennedy changed at P.F.H.
Barnstable Sept
9/11/06 J. S. [unclear] age

Agente Correction. Lat. 276
 Exécution Correction. M. 10/6/196

Sept 13 1966
Sept 14 1966
Sept 15 1966
Sept 16 1966
Sept 17 1966
Sept 18 1966
Sept 19 1966
Sept 20 1966
Sept 21 1966
Sept 22 1966
Sept 23 1966
Sept 24 1966
Sept 25 1966
Sept 26 1966
Sept 27 1966
Sept 28 1966
Sept 29 1966
Sept 30 1966

Received - \$
Sept. 21 1906

9/18/1994

Weight of Car and Contents

When a through route is used and the shipment is to be exhibited en route, the sub divisions must be shown in the same extreme in road order, starting opposite each shipment the initial of the road to which it connects.

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

The use of information way-bills is positively forbidden. If any changes are made in this way-bill authority, for some must be stated herein.

Top

Weight the Car at

6500 31st Court

For

ROUTE

Texarkana & Fort Smith Railway Company LOCAL WAY BILL FOR FREIGHT FROM

Date 9/18 1906
 From Reliff, Texas To Daymond Texas
 Car No. 669 Initials K64 To Car Sabine Texas

NAME, CONSIGNEE AND DESTINATION	ARTICLES AND CLASSIFICATION CONDITIONS (S.R., S.S., S.M., S.L., E.C.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCE	PREPAID	PREPAID BEYOND
<u>Sp Sabine Texas Co</u>							
<u>W.A. Powell Co Ltd</u>	<u>Rph Lbr</u>	<u>66900</u>	<u>6</u>	<u>40.14</u>			
<u>Sabine</u>	<u>Sho</u>	<u>707.1</u>	<u>10</u>	<u>16.00</u>			
<u>Export to Europe</u>		<u>3000</u>	<u>5</u>				
			<u>15</u>	<u>100.35</u>			

Left 12/1/06
 Station checked
up

Heading changed
 at So F S Daymond Texas
9/11/06

Interstate

12/6/11
Agent's Connection Station
Auditor's Connection Station
10/6/1906

When a through rate is used and the shipment is to be
 moved as such, the rate division must be shown in the
 column in bold outline, no less space to each provision the
 loaded are used to which it applies.

If private line cars are used and rental charges are not
 applied on the way bill, the way bill must show by endorse-
 ment the authority for the absence of such charges.

Forwarding agent will be held responsible for any loss
 of charges that may occur by failure to comply with these
 instructions.

The use of memorandum way-bills is positively forbidden.
 If any changes are made in this way-bill authority for
 same must be stated hereon.

OFFICE EX-10
 1906

SABINE
 1906

When a through rate is used and the shipment is to be moved as such, the rate division must be shown in the column in bold outline, no less space to each provision the loaded are used to which it applies.

ARTHUR
ROUTE

Texarkana & Fort Smith Railway Company LOCAL WAY BILL FOR FREIGHT FROM

Date 9/11 1906 Series 7 No. 89

From Fort Smith TO Beaumont Texas

For Additional Charges see W. B. No. 190 Car No. 2475 Initials KCS To CDR. Sabine Texas

SHIPPER	MARKS, CONSIGNEE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., R.R., E.R., E.C.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<u>S.T. Co</u>	<u>Sabine Texas Co</u>								
	<u>Wm. Lovell Co Ltd</u>								
	<u>Sabine, Texas</u>			<u>40000</u>	<u>5</u>	<u>2000</u>			
				<u>62000</u>	<u>6</u>	<u>3720</u>			
				<u>Total</u>	<u>10</u>				
				<u>Inv</u>	<u>5</u>				
					<u>15</u>	<u>9300</u>			
	<u>Interstate.</u>								
	<u>Export to Europe</u>								

Agents Correction
audited
10/6/1906

12767

Revised
B. Sept 21/06

Item 181
Sept 1 tariff 28-14
Q312 file 1540

Heading changed
at Beaumont Texas
9/14

Weight of Car and
Contents
Tons

When a through rate is used and the shipment is to be re-billed en route, the sub-divisions must be shown in the rate column in road order, noting opposite each proportion the initial of the road to which it applies.

Weigh this Car at
Stop this Car at
For

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.
Forwarding agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.
The use of memorandum way-bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

NO R.P.
SEP 20 1906
OFFICE
BEAUMONT
NO R.P.
SEP 21 1906
SABINE TEXAS

Doc 93-100 Series 100 No 14

WAY BILL FOR FREIGHT FROM

Arbiff, Texas TO Sabine, Texas

The use of Memorandum Way Bills is positively forbidden.

If any changes are made in this way-bill authority for same must be stated hereon.

ROUTE		1 VIA	2 VIA	3 VIA	4 VIA	5 VIA
		JUNCTION WITH	JUNCTION WITH	JUNCTION WITH	JUNCTION WITH	JUNCTION WITH
Lbs.						
Lbs.	*When a through car is used and the shipment is so re-billed as return, the cab division must be shown in the rate column in road only - the initial of the road at which it arrives.	Length of Car	Fe.	In.	Weigh this Car at	
Lbs.		Marked Capacity of Car		Lbs.	Stop this Car at	
					For	
For Additional Charges see		W.B. No.	Dated	190	Loaded at	o'clock M. Date

Car Int. 2011 Car No. 22
 Int. 2440 Central
 Int. Charged B&M
 Int. No. 26 Hennepine

[illegible]

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM CONNECTING LINES MUST STATE IN THE SPACES BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED.

<p>Weight of Car and Contents</p>	<p>If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.</p>	<p>Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>
<p>Time for car only is included and does not include the time for the car.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>	<p>Stamp of Junction Forwarding Agt.</p>



Texarkana & Fort Smith Railway Company

LOCAL WAY BILL FOR FREIGHT FROM

Date

1906

Series

No.

9/12 *1906* *S 27* *14*
Relief Texas *to* *Beaumont Texas*
21134 *Initials* *RLS* *To Car* *Sabine Twp*

For Additional Charges see

W. B. No.

100

Car No.

Initials

To Car

TRANSFERRED

SHIPPER	CONSIGNEE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (U.S. C.R. No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
S. T. Corp.	Sabine Twp		Rgh Lbs	40000	4	1600			
	Wahowee Co		Lbs	42900	6	2574			
	Sabine Twp			2078	10				
	Export Europe			2078	5				
	Interstate								

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Agent at destination
checked and correct
12610

Agents Convention
10/6/1906

Sept 12/1906
Station account
Sept 12/1906

wired
9/17

"COPY"

Heavily charged at
Beaumont 9/11/06
Period B.
Sept 11/1906

Beaumont
Sept 12
1906
SABINE TWP

Weight of Car and Contents

When a through rate is used and the shipment is to be re-billed en route, the subdivisions must be shown in the rate column in road order, being opposite each property the initial of the road to which it accrues.

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

The use of memorandum way-bills is positively forbidden. If any changes are made in this way-bill authority for same must be stated hereon.

Weight this Car at

Stop this Car at

For

Texarkana & Fort Smith Railway Company

WAY BILL FOR FREIGHT FROM

Date 9/07/3

TO *Salvatore Lopez*

Weighed at

G 844
 Tarr 423
 Net 621

Lbs
Lbs
Lbs

When a through joint is used and the alignment is to be parallel or near, the subdivider must be shown to the contractor in final order, noting opposite each proposition the label of the road on which it occurs.

Length of Car _____ Ft. _____ In.

Marked Capacity of Car _____ Lbs.

Weight this Car *2500*
(Stop this Car at *2500*)

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car Int. 1140 TRANSFERRED TO Car No. 34751

Int.	No.	At
Int.	No.	At
Int.	No.	At

For Additional Charges see _____ W.R. No. _____ Dated _____ 190__

Loaded at _____ o'clock M. Date _____

SHIPPER Consolidating Line Reference, Original Car and Way-Bill Number and Point of Shipment	MARKEE, COMMERCE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (D.R., C.R., Ref., Gtd., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
12960	W.B. Sabine, San Francisco Wm. A. Powell & Co. Ltd. Sabine Dept.		Rgt. Lbr. S.C.	2+2.5 21.20 null	10 5 1.5	60.00	1076		
				400.00	24.00	24.00	1076		
			REVISED OCT 9 1906		6	24.00			
			AS REPORTED						
			FREIGHT.	24	00				
			CHARGES:						
			PREPAID:						

ACROSS AN EXISTING STATION RECEIVING THE WAY-BILL FROM COMING, LEAVE MUST BE MADE IN THE SPACE BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS MADE.

Weights of Car and Contents

1. If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

1990

11-11

Page 1

11

A circular library stamp from the University of California, Berkeley. The text "UNIVERSITY OF CALIFORNIA" is curved along the top inner edge, and "BERKELEY" is curved along the bottom inner edge. In the center, the year "1906" is stamped. The stamp is partially obscured by the binding of the book.

PORT
ARTHUR
ROUTE

Texas & Fort Smith Railway Company

WAY BILL FOR FREIGHT FROM *Relief Texas* TO *Sabine*

Date *9/16* No. *13*

Weight in

844
223
621

Lbs.
Lbs.
Lbs.

1 VIA <i>Mont</i> JUNCTION WITH <i>J.N.O.</i> Ry.	2 VIA <i>OK</i> JUNCTION WITH <i>OK</i> Ry.	3 VIA JUNCTION WITH Ry.	4 VIA JUNCTION WITH Ry.	5 VIA JUNCTION WITH Ry.
Length of Car <i>W</i> Fr. <i>W</i> In. <i>W</i>		Weight per Car at <i>W</i> (Stop this car at <i>W</i>) (For <i>W</i>)		
Marked Capacity of Car <i>W</i> Lbs.		Loaded at <i>W</i> o'clock <i>W</i> M. Date <i>W</i>		

The use of Memorandum Way-Bills is positively forbidden.

If any changes are made in this way-bill authority for same must be stated hereon.

Car No. *W 9100* Car No. *S.P.*
Trackage to
Lat. *W* No. *W* At *W*
Lat. *W* No. *W* At *W*
Lat. *W* No. *W* At *W*

For All Freight Charges see

W.B. No.

Date

190

Loaded at

o'clock *W* M. Date *W*

SHIPPER Containing Date Reference, Original Car and Way-Bill Number and Place of Shipment	HAIR, COMMER AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Gd., Etc.)	WEIGHT	DATE AND AMOUNT	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<i>S.T. Co.</i>	<i>S/O. Sabine Transp.</i>		<i>Rgh. Lbr.</i>						
	<i>W.A. Powell & Co.</i>		<i>200</i>						
			<i>40 000</i>	<i>8 3/4</i>		<i>35 00</i>			
			<i>62 100</i>	<i>6</i>		<i>09 26</i>			
			<i>J. & J.</i>	<i>10</i>					
			<i>20 NO</i>	<i>2</i>					
					<i>15</i>	<i>99 15</i>			
	<i>Agents' Commission</i>								
	<i>Auditor's Commission</i>								
	<i>10/6</i>	<i>12 6</i>							

Sept. 22 1906
Station Receipt
Checked
Sept. 20 1906

RECEIVED
SEP 20 1906

NORA CO.
FREIGHT
SEP
1906
OFFICE
TEXAS

SEP
22
1906
TEXAS

AGENTS AT JUNCTION STATIONS EXCEPT THIS WAY-BILL FROM COMBINING WITH OTHER STAFF IN THE FOLLOWING, IN COMBINATION ORDER, THE NAMES OF THEIR STATIONS AND DATE FROM WHICH THEY ARE SHIPPED.

Weight of Car and
Contents

If private line cars are used and correct charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the amount of such charges.

Forwarding Agent will be held responsible for any loss of charges that may occur by failure comply with these instructions.

Forwarding Agent Forwarding Agent Forwarding Agent Forwarding Agent Forwarding Agent

Date 10/3 1936 3
 TO Subur Japan
 FROM Wash D.C.
 BY Expt

The use of Memorandum Way-Bills is positively
 forbidden.
 If any changes are made in this way bill authority
 for same must be stated hereon.

SPECIAL FOR <u>Mont</u> INSTRUCTIONS WITH <u>arr</u>	SPECIAL FOR <u>Mont</u> INSTRUCTIONS WITH <u>arr</u>	SPECIAL FOR <u>Mont</u> INSTRUCTIONS WITH <u>arr</u>	SPECIAL FOR <u>Mont</u> INSTRUCTIONS WITH <u>arr</u>	SPECIAL FOR <u>Mont</u> INSTRUCTIONS WITH <u>arr</u>
Length of Car <u>190</u>	Weight of Car <u>190</u>	Weight of Car <u>190</u>	Weight of Car <u>190</u>	Weight of Car <u>190</u>
Loaded at <u>o'clock</u>	Loaded at <u>o'clock</u>	Loaded at <u>o'clock</u>	Loaded at <u>o'clock</u>	Loaded at <u>o'clock</u>

Car No. 23197 Car No. KCS
 Ins. 3 At
 Ins. No. At
 Ins. No. At

ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Gd., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
2gh Lbr.	400 00	2 50	PD 10	1076		
AS REPORTED	843 00	6	50 58	1076		
FREIGHT: 50 58	2 50	10				
CHARGES:		126 45				
PREPAID:		Report to Europe				

OCT 6 1936
 STATION ACCOUNT
 CHECKED
 OCT 9 1936
 — M —

REVISED
 OCT 9 1936

IN PRESENTING THIS WAY-BILL TO THE CARRIER, THE SHIPPER OR AGENT SHALL SIGN AND FURNISH THE FOLLOWING INFORMATION IN CONSECUTIVE ORDER, THE NAMES OF THEIR OFFICES AND DATE UPON WHICH WAY-BILL IS PRESENTED:

1	2	3	4	5
Name of Station Forwarding Agent	Name of Station Forwarding Agent	Name of Station Forwarding Agent	Name of Station Forwarding Agent	Name of Station Forwarding Agent

[illegible]



Texarkana & Fort Smith Railway Company

LOCAL WAY BILL FOR FREIGHT FROM

Date 10/2 1906 Series 2 No. 5
From Rutledge, Tenn TO Birmingham, Ala
Initials SP To Car Sabine, Tenn
Car No. 553 TRANSFERRED

Additional Charges See

W. B. No.

190

Car No.

Initials

To Car

SHIPPER	MARKS, CONSIGNEE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (G.A., S.S., R.R., C.R., F.R.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<u>SP</u>	<u>Sabine Trans Co</u>		<u>Rgh Lbs</u>			<u>29.16</u>			
	<u>Latimer Point</u>		<u>SP</u>			<u>14.00</u>			
	<u>Sabine, Tenn</u>					<u>14.00</u>			
						<u>5.00</u>			
						<u>R/O B.F. 4. 67.18</u>			
	<u>Export to Europe</u>		<u>Marked Sign 213</u>						
			<u>Interstate</u>						
						<u>Heading & Destination</u>			
						<u>changed at Latimer</u>			
						<u>Off freight</u>			

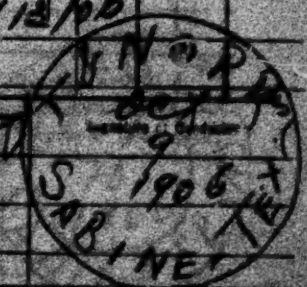
12/981

<u>As Reported</u>	
<u>Weight</u>	<u>7190</u>
<u>Charges</u>	
<u>Refund</u>	

<u>Apate Corrother Sheet</u>	
<u>no.</u>	
<u>Auditor Corrother Sheet</u>	
<u>no.</u>	<u>10/1/06</u>

Oct 9th 1906
station account
checked
Oct 11/1906
m

Revised B
Oct 12/06



Weight of Car and Contents

When a through rate is used and the shipment is to be delivered in lots, the shipper must be shown in the bill of lading the order, noting opposite each consignment the initial of the road to which it accrues.

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

The use of memorandum way-bills is positively forbidden. If any changes are made in this way-bill authority for same must be stated hereon.

Weigh this Car at

By this Car

For

FOR COUNTRIES... (Small text at bottom right)

WAY BILL FOR FREIGHT REC

TO *Learn*

If any changes are made in this way-bill authority for name must be stated hereon.

ROUTES	1 VIA	2 VIA	3 VIA	4 VIA	5 VIA
	<i>Bismont</i> JUNCTION WITH <i>2nd</i> RY.	<i>OK</i> JUNCTION WITH <i>1st</i> RY.	JUNCTION WITH RY.	JUNCTION WITH RY.	JUNCTION WITH RY.
Len.					
Lbs.	When a through train is used, and the engine and car are delivered to the engine house, the car should be weighed in the car and delivered to the engine house. The car should be weighed in the engine house and the weight of the car should be recorded in the record book.	Length of Car	Ft.	In.	Weight this Car at <i>Bismont</i>
Lbs.		Marked Capacity of Car	Lbs.		Stop this Car at <i>1st</i>

Car Int. 21494

Cat No. *Red*

TRANSMISSION TO

Est.	No.	At.
------	-----	-----

Lat	No	Age
36.00	1	1
36.00	2	1
36.00	3	1
36.00	4	1
36.00	5	1
36.00	6	1
36.00	7	1
36.00	8	1
36.00	9	1
36.00	10	1
36.00	11	1
36.00	12	1
36.00	13	1
36.00	14	1
36.00	15	1
36.00	16	1
36.00	17	1
36.00	18	1
36.00	19	1
36.00	20	1
36.00	21	1
36.00	22	1
36.00	23	1
36.00	24	1
36.00	25	1
36.00	26	1
36.00	27	1
36.00	28	1
36.00	29	1
36.00	30	1
36.00	31	1
36.00	32	1
36.00	33	1
36.00	34	1
36.00	35	1
36.00	36	1
36.00	37	1
36.00	38	1
36.00	39	1
36.00	40	1
36.00	41	1
36.00	42	1
36.00	43	1
36.00	44	1
36.00	45	1
36.00	46	1
36.00	47	1
36.00	48	1
36.00	49	1
36.00	50	1
36.00	51	1
36.00	52	1
36.00	53	1
36.00	54	1
36.00	55	1
36.00	56	1
36.00	57	1
36.00	58	1
36.00	59	1
36.00	60	1
36.00	61	1
36.00	62	1
36.00	63	1
36.00	64	1
36.00	65	1
36.00	66	1
36.00	67	1
36.00	68	1
36.00	69	1
36.00	70	1
36.00	71	1
36.00	72	1
36.00	73	1
36.00	74	1
36.00	75	1
36.00	76	1
36.00	77	1
36.00	78	1
36.00	79	1
36.00	80	1
36.00	81	1
36.00	82	1
36.00	83	1
36.00	84	1
36.00	85	1
36.00	86	1
36.00	87	1
36.00	88	1
36.00	89	1
36.00	90	1
36.00	91	1
36.00	92	1
36.00	93	1
36.00	94	1
36.00	95	1
36.00	96	1
36.00	97	1
36.00	98	1
36.00	99	1
36.00	100	1

Lat. _____ No. _____ Az. _____

Additional Charges for

W.B. No.

Dried

190

Loaded at 10 o'clock M. Disch'd

Listing Line Reference, Original Car and
 War-Bill Number and Point of Delivery

MARKS, COUNTRIES AND DESTINATIONS

No. of
Packaging

ARTICLES AND CLASSIFICATION
CONDITIONS (O.R., C.R., Ref. Guid., Etc.)

WEIGHT

POWER AND AUTHORITY

**FREIGHT
CHARGES**

ADVANCES

PREPAID

PREPAID BEYOND

OCT 10 1906
STATION ACCOUNT
CHECKED
OCT 13 1906
-N-

REVISÉ
13 OCT 13 1966

Export to Europe

ASSETS AT JACKSON STATION RECEIVING THE WAY-BILL FROM CONDUCTOR JOHN MORGAN AT THE STATION BELOW. IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS

If private law can be used and costs charged are not applied on the way-bill, the way-bill may show by endorsement the authority for the amount of such charges.

Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

A circular postmark from Portland, ME, dated OCT 4 1908. The text "PORTLAND ME" is curved along the top inner edge, and "OCT 4 1908" is in the center. The bottom edge is partially obscured by the next block.

2

3

1

13

5
10710

PORT
ARTHUR
ROUTE

Texarkana & Fort Smith Railway Company.

WAY BILL FOR FREIGHT

Date 10/6

Series 20N

No. 8

From *Beaumont*

To *Beaumont*

To *Beaumont*

To *Beaumont*

1 VIA	2 VIA	3 VIA	4 VIA	5 VIA
<i>Beaumont</i>				
<i>Beaumont</i>				
<i>Beaumont</i>				
<i>Beaumont</i>				
<i>Beaumont</i>				

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car Int.	24517	Car No.	125
Int.	No.	At	
Int.	No.	At	
Int.	No.	At	

For Additional Charges see W.B. No. 190

Loaded at *Beaumont* o'clock *11:15*

SHIPPER	MARKS, COMMENTS AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.K., C.R., Ref., Gd., Etc.)	WEIGHT	RATE AND CURRENCY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<i>S. J. Co</i>	<i>Sp. Sabine Crude</i>		<i>R. & L.</i>	<i>40000</i>	<i>20</i>	<i>80 00</i>			<i>ACT 10 1906</i>
	<i>W. A. Powell</i>			<i>62510</i>	<i>5</i>	<i>99 75</i>			<i>STATION ACCOUNT</i>
	<i>Do</i>								<i>CHECKED</i>
			<i>Export to Europe</i>						<i>ACT 13 1906</i>
									<i>- M -</i>
									<i>REVISED</i>
									<i>OCT 13 1906</i>

Weight of Car and Contents	Forwarding Agent	Forwarding Agent	Forwarding Agent	Forwarding Agent



PORT
PART HUR
ROUTE

PERISHABLE FREIGHT - READ AND FOLLOW DIRECTIONS AS TO HANDLING
Texarkana & Fort Smith Railway Company.
WAY BILL FOR FREIGHT FROM *Reluff 24* TO *Subine 24*
Date *10/7/1916* No *2011* 8

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

1 VIA <i>Ammon</i> DIRECTION WITH <i>2nd</i> RY	2 VIA <i>ST</i> DIRECTION WITH <i>ST</i> RY	3 VIA <i>ST</i> DIRECTION WITH <i>ST</i> RY	4 VIA <i>ST</i> DIRECTION WITH <i>ST</i> RY	5 VIA <i>ST</i> DIRECTION WITH <i>ST</i> RY
Length of Car <i>60</i> Ft. In.	Weight this Car at <i>Ammon</i>	Stop this Car at <i>12</i>	For	Loaded at <i>o'clock</i> M. <i>12</i> P. <i>12</i>
Marked Capacity of Car				

Car No. *20288* Car No. *115*
Trailer No. *115* At
Int. No. *115* At
Int. No. *115* At

SHIPPER Concerning Line Reference, Original Car and Way-Bill Number and Point of Shipment	MARKS, COMMERCE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Rel., Gnd., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<i>S. J. Co.</i>	<i>Subine, Tenn.</i>		<i>Ry. Lh.</i>	<i>40 000</i>	<i>2 1/2</i>	<i>80.00</i>			<i>OCT 18-1916</i>
<i>130 54200</i>	<i>Subine</i>		<i>202 S 10</i>						<i>STATION ACCOUNT</i>
<i>130 54200</i>	<i>Ex port Europe</i>		<i>1000 5-</i>	<i>63 300</i>	<i>15</i>	<i>94 75</i>			<i>OCT 25-1916</i>
									<i>M-</i>

When a perishable freight car is properly coupled to a train, the agent at whose station the car is set out must immediately report to the general freight agent by wire or by letter, the condition of the car and the reason for its being set out. Conductors handling the car will watch it closely to prevent any necessity arising for setting it out by reason of its getting out of order. Conductors will call special attention of inspectors at division points in this car and insist on very careful inspection and any necessary repairs. Before setting this car out at any intermediate station, should a necessity arise, practical effort to communicate with dispatching office and get instructions concerning it. If it becomes absolutely necessary to leave this car at an intermediate station without having first communicated with dispatching office, conductors must report the fact to Superintendent and General Freight Agent by wire at first opportunity. Conductors will place a switch list opposite the number of this car, the word "perishable" must be removed and "regular" substituted.

Weight of Car and Contents	Remarks	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent	Station Forwarding Agent

Stamp: *RECEIVED OCT 12 1916*
Stamp: *107/3*
Stamp: *Subine Tex*

79300
40000

15-8

11740

STATION ACCOUNT

OCT 14 1906

CHECKED

OCT 31 1906

-M-

Cars bearing Time Freight Cards must go through without delay and must be given preference over all other cars except those carrying time freight cards. The car bearing the card is to be loaded at the station at which it is out of a train for any reason whatever, the agent at whose station it will immediately notify by telegraph ---- Agent and the General Freight Agent, informing them of the number and initials of the car, character of defects, and the class of freight car is loaded with. ----- out at a station or switch where there is no agent, or is wrecked between stations, the conductor will give them telegraphic notifications from first telegraph station. ----- the foregoing, conductors will report every instance of setting out cars carried "Time Freight" to the Superintendent on Form No. 261, relating circumstances.

----- Cards should invariably be removed from this car when it reaches the station to which it is billed, and the agent at whom receiving station will see that it is done.

----- line cars are used and rental charges are not applied on the WAY-BILL, the Way-Bill must show by endorsement ----- erity for the absence of such charges. ----- ing agent will be held responsible for any loss of charges that may occur by failure to comply with these -----

The use of Memorandum Way-Bills is positively forbidden. If any changes are made in this Way-Bill authority for same must be stated hereon.

STATE WERE LOADED AT INTERSTATE

NUMBER OF CAR Feet.

..... clock.....M.

DATE.....

Agents of Junction Stations receiving this Way-Bill from Connecting Line must stamp in the space below, in Consecutive Order, the Names of their Stations and the time when the bill is received by them.

RECEIVED
OCT 16 1906
P.O. OFFICE
DUNN

REVISED
8-OCT-31

Freight, Tax, To Station, 10.00
Stamp must not be used for rate of Station.

CAN INT. 3.00
CAN INT. 3.00
CAN INT. 3.00

Via Junction Via Junction Via Junction Via Junction Via Junction
Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

10/16

Lungon

AGENTS AT
NATION
OCT 16 1906
SABINE, TEXAS
DATE REPORTED.

--- 10-03 - copy Ink.

FREIGHT VAY-BILL, ARTHUR BOUTER

TEARAWAY & F. BITE RAILWAY COMPANY.

Buliff, Tex. To Badine Tex.

Figures must be used to indicate month.

Stamp must not be used
for name of Station.

WAV 3PI1

CAR TR. 2/11/2... CAR TO M. L. F. ...
TRANSFERRED INTO

5

[illegible]

Event

7134

10

9207

4

•

•

4

...

2000

Load Freight to be entered

in this space where car

10. **Wolfe**

REF ID: A60708

--- THIS CAR AT MOST

MARKED CAPACITY OF BAR

--- THIS CAR AT 2000.....MARKED CAPACITY OF CAR./A.O...LBS.

When a through rate is used and the shipment is to be re-waybilled en route, the subdivision must be shown in the rate column, in road order, noting opposite each proportion the initial of the road to which it

1-800-4-A-RENT
 1-800-427-7368

**COMMON
Line-References;
Original car and
Wedge Way-Bill
Number and Point
of Shipment**

2560

WORK, CONFLICT AND TRANSITION

A. Sabine Thom Co.

Sabine. Dec

ntfy. W. A. Powell & Co.

ARTICLES AND CLASSTIFICATION

Rgh. Lbr.

22

Weight of
 net
 Gross
 tare
 net
 1256
 344
 912
 Capacity of car

WEIGHT

91200
40000Date and
AUTHORITY


FREIGHT

13680
1600

REMARKS

PREPAID PREPAID RECEIVED

 OCT 14-1906
STATION ACCOUNT
CHECKED
OCT 24-1906
-M-

 Ex for Europe
13088

Cars bearing Time Freight Cards must go through without delay and must be given preference over all other cars, except those containing Live Stock or Perishables. The car becomes damaged or wrecked in transit, it is not out of a train for any reason whatever, the agent at whose station it will immediately notify by telegraph ----- Agent and the General Freight Agent, informing them of the number and initials of the car, character of defects, and the class of freight car is loaded with. ----- out at a station or switch where there is no agent, or is wrecked between stations, the conductor will give these telegraphic notifications from first telegraph station. ----- the foregoing, conductors will report every instance of setting out cars carried "Time Freight" to the Superintendent on Form No. 261, relating circumstances.

----- Cards should invariably be removed from this car when it reaches the station to which it is billed, and the agent at same receiving station will see that it is done.

----- line cars are used and rental charges are not applied on the

Way-Bill, the Way-Bill must show by endorsement ----- ority for the absence of such charges. ----- ing agent will ~~conductors~~ be held responsible for any loss of Charges that may occur by failure to comply with these -----

The use of Memorandum Way-Bills is Positively Forbidden.

If any changes are made in this Way-Bill authority for same must be stated hereon.

CARS HERE LOADED AT

NUMBER OF CARS

.....elect.....

..... Feet.

DATE.....

Agents at Junction Stations receiving this Way-Bill from Connecting Line must stamp in the space below, in consecutive order, the names of their Stations and date upon which Way-Bill is received.

Tetarkana & Fort Smith Rail
LOCAL WAY BILL FOR F



Station Agent
Signature
Date

Stamp of Junction Forwarding Agt.
3.

Stamp of Junction Forwarding Agt.
2.

Forwarding A t.
1.

Company
FROM

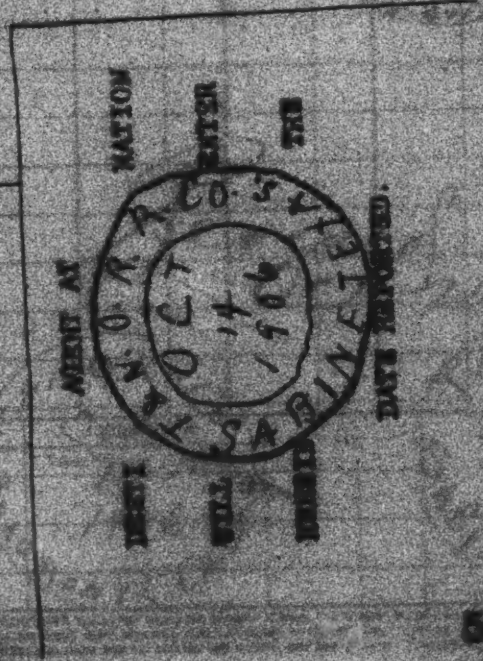
110/14
X
Signature

Stamp of Junction Forwarding Agt.
6.

Stamp of Junction Forwarding Agt.
5.

Stamp of Junction Forwarding Agt.
4.

If private passenger cars are used and consignor or consignee is not the owner of the way-bill, the agent must have the authority for the use of such cars. Forwarding agent will be held responsible for any loss or damage to such cars. The use of memorandum way-bills is prohibited. If any changes are made in the way-bill authority for use must be stated hereon.



10/15 *6* *ON* *12*
Cliff, Texas TO Sabine Texas
TRANSFERRED

Via <u>Post</u>		W. B. No. <u>100</u>	Car No. <u>5447</u> <u>712</u>	To Car	At
-----------------	--	----------------------	--------------------------------	--------	----

SHIPPER	NAME, ADDRESS AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (A.S., G.S., M.G., E.C.)	WEIGHT	TARE AND AUTHORITY	FREIGHT CHARGES	ADVANCE	PAYMENT	PREPAID BEYOND
S.L. Co.	J.P. Sabine & Co. Sabine Lumber Co. Woodward Co. Ltd.	Rph Lbr	sps	4000 lb	N	1600			
	X 1-3164		Interstate	78400	N	11760			
	Export to Europe.								
			O.O.X. 19/11906 Station Account Checked Nov 7 / 1906 M						
			Received B Oct 4 / 1906						

Weight of Car and Contents

When enough data is collected the document is to be placed in order. The instructions must be shown in the column in read order, going across in each paragraph the order of the hand by which it appears.

If private-line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the incurrence of such charges.

Forwarding agent will be held responsible for any loss of charges that may result by failure to comply with these instructions.

The use of memorandum way-bills is positively forbidden. If any charges are made in this way-bill authority for same must be stated herein.

WORTHINGTON CO. LTD.

Stop the Cost

A circular seal with the text "NATIONAL ORNITHOLOGICAL COUNCIL" around the top and "PORTLAND, MAINE" around the bottom. In the center, it says "October 1906".

A circular ink stamp from the Northern California Game Warden's office. The text "NORTHERN CALIFORNIA" is curved along the top inner edge, and "GAME WARDEN" is curved along the bottom inner edge. In the center, the date "OCT 22 1926" is stamped in a straight line.

Weight of Car and Contents	When a through rate is used and no allowance is made for excess weight, the gross weight must be shown in the bill of lading and order, noting on back each piece if it indicates the road to which it accrues.		If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges. Forwarding agent will be held responsible for any loss or charges that may occur by failure to comply with these instructions. The use of memorandum way-bills is positively forbidden. If any changes are made in this way-bill authority for same must be stated hereon.	No. of Tons X 2769 28 10 24 X 270 208 11 26	Order Number Date Recd. Net wt.		Freight Lump sum
	Tare	Weight Bill Car as			Weight Bill Car as		

REMARKS: This copy is available for inspection at the office of the Bureau of Customs and Excise, New York City.

TO: *Mr. J. Edgar Hoover*

1

A circular ink stamp from the National Archives and Records Administration. The outer ring contains the text "NATIONAL ARCHIVES AND RECORDS ADMINISTRATION". Inside the circle, at the top, are the letters "K P N O T P". In the center, there is a handwritten date "JUN 24 1967". Below the date, the word "Fulfilling" is written in a large, stylized script. At the bottom of the circle, the words "U.S. GOVERNMENT PRINTING OFFICE" are printed in a smaller font.

No.	Start Time		Date	Remarks
	Enter Port	Left at		
1	2789	308	10 27	Shubert 10. NE - T

561

**PORT
THRU
ROUTE**

Texarkana & Fort Smith Railway Company **LOCAL WAY BILL FOR FREIGHT FROM**

Date 10/15/06 Series TON No. 14

FROM Ruliff Texas TO Sabine Texas
TRANSFERRED

Additional Charges: W. B. No. 10 Car No. Initials To Car At

SHIPPER	MARKS, CONSIGNEE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (S.S., G.G., Pa., Ma., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCE	PREPAID	PREPAID BEYOND
<u>S.T. Co</u>	<u>To Sabine Texas Co</u>								
	<u>Wfy</u>								
	<u>Loadwood Co to Rgn Lbr</u>			<u>4000</u>		<u>14.00</u>			
	<u>Sabine Texas</u>					<u>61.20</u>	<u>15</u>	<u>9.10</u>	
	<u>Export to Europe</u>		<u>Inter State</u>						
	<u>X-13101</u>								

Handwritten notes in a box:
X at end of line
Western Ry
Cross 838
Tare 200
Net 612
Amount paid
current charges

Oct 20/1906
Station Account
checked
Nov 2/1906
M.

U.S. R.R.
RECEIVED
OCT 17 1906

RECEIVED
U.S. R.R.
FREIGHT
OCT 12 1906
DEPT. OF COMMERCE

RECEIVED
U.S. R.R.
OCT 20 1906

Weight of Car and Contents Tons
Weigh this Car at
Stop this Car at
For

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.
Forwarding agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.
The use of memorandum way-bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

No. of Tons 2789.308 Date 10/15/06 Wagon

THUR
VIE

Texarkana & Fort Smith Railway Company

WAY BILL FOR FREIGHT

From Ark. La. 2402 TO Ark. La. 2402

1 VIA <u>Brown</u> DIRECTION WITH <u>2nd</u>	2 VIA DIRECTION WITH	3 VIA DIRECTION WITH	4 VIA DIRECTION WITH	5 VIA DIRECTION WITH
Length of Car <u>60</u>	Length of Car	Length of Car	Length of Car	Length of Car
Weight this Car at <u>100</u>	Weight this Car at	Weight this Car at	Weight this Car at	Weight this Car at
Loaded at <u>Ark. La. 2402</u>	Loaded at	Loaded at	Loaded at	Loaded at

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car No. 11363 Car No. 11363
Int. No. 1 At Ark. La. 2402
Int. No. 1 At Ark. La. 2402
Int. No. 1 At Ark. La. 2402

SHIPPER	MARK, COMMODITY AND DESCRIPTION	No. of Packages	APPROXIMATE CLASSIFICATION CONDITIONS (O.R., C.R., R.M., Gd., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<u>P. T. Co.</u>	<u>40 Sabine Iron & Ld.</u>	<u>40</u>	<u>Rgh. 2nd class</u>	<u>40</u>	<u>124/10</u>	<u>186 154</u>			
<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>	<u>Ark. La. 2402</u>



RECEIVED
OCT 21 1906

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM CONNECTING LINE MUST SIGN IN THE SPACES BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED.

1 Weight of Car and Contents	2 If private line cars are used and rental charges are not applied on this way-bill, the way-bill must show by endorsement the authority for the payment of such charges.	3 Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.	4 Stamp of Junction Forwarding Agt.	5 Stamp of Junction Forwarding Agt.	6 Stamp of Junction Forwarding Agt.	7 Stamp of Junction Forwarding Agt.	8 Stamp of Junction Forwarding Agt.
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Texarkana & Fort Smith Railway Company.

WAY BILL FOR FREIGHT FROM

D

Persons who are in need of language assistance

Verona

2

No.

WAY BILL FOR FREIGHT FROM *Richfield, Tex*

TO *Salvino Lopez*

[illegible]

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car Int. 4198 } Car No. 444
5329 TRANSFERRED TO LW
 Int. No. At
 Int. No. At
 Int. No. At

Admissions! Charges see

W.B. No.

666

Dated _____

190

Loaded at

o'clock

M. Date

SHIPPER

MAKES, COMPANIES AND DESTINATIONS

No. of
PatientsARTICLES AND CLASSIFICATION
CONDITIONS (O. E. C. E. Ref. G. E. E. = 1)

WEIGHT

RATE AND AUTHORITY

**FREIGHT
CHARGES**

ADVANCE

PREPAID

PREPAID BEYOND

156.

S/S Saline Trans Co
Nty. Wapowell Catted
Saline.

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INTERSTATE

60	100	11	24
1195	00	15	1792

OCT 31 1966
STATION ACCOUNT
CHECKED
NOV 31 1966
— M —

REVISED
3 NOV 3 1916

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM CONNECTING LINES MUST STAMP IN THE SPACES BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED.

Weight of Car and Contents

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

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5/0724

11 *Richards*
 Arrive at Destination
 will be *24* *24* *1906*
SADINE 7285
 the *24* *1906* arrived
 at his station. *56*

564

PORT
THOR
ROUTE

Texarkana & Fort Smith Railway Company.

WAY BILL FOR FREIGHT FROM

10/21 6 20K 26
Ruley 24 TO Sabine, 24

1 VIA Bmont JUNCTION WITH 2nd	2 VIA	3 VIA	4 VIA	5 VIA
Length of Car Yr. In.	Length of Car Yr. In.	Length of Car Yr. In.	Length of Car Yr. In.	Length of Car Yr. In.
Marked Capacity Car	Marked Capacity Car	Marked Capacity Car	Marked Capacity Car	Marked Capacity Car

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car No. 21226 Car No. M. 1A
Ins. No. At
Ins. No. At
Ins. No. At

Additional Charges: W.B. No. 180 Loaded at 11 o'clock M. Date

SHIPPER Name, Address, Original Car and Way Bill Number and Point of Shipment	MARKS, COMMERES AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Gen., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCE	PREPAID	PREPAID BEYOND
S. H. Co	Sabine, Texas Sabine Tex.		Ryl. Lbr. Spec	44000 935 10	2F 15	140 25			
<div>13/26</div> <div>Amount at Ruley 24 10/21/06 are 948 net 935</div> <div>INTERSTATE</div>									

OCT 31 1906
STATION ACCOUNT
CHECKED
NOV 3 1906
-M-

AGENTS AT JUNCTION STATIONS FORWARDING THIS WAY-BILL FROM CARRIER'S LINE MUST STAMP IN THE SPACES BELOW, IN CONNECTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE WHEN WAY-BILL IS RECEIVED.

Weight of Car and Contents	If private line cars are used and special charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges. Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.	1 Stamp of Junction Forwarding Agt.	2 Stamp of Junction Forwarding Agt.	3 Stamp of Junction Forwarding Agt.	4 Stamp of Junction Forwarding Agt.	5 10/24 24/1 Linger	Stamp of Junction Forwarding Agt.
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STANDARD ROUTE

Arkansas & Fort Smith Railway Company

WAY BILL FOR FREIGHT FROM

Date 10/22/26 To Sabine 24

1 VIA Bmond JUNCTION WITH Mo	2 VIA	3 VIA	4 VIA	5 VIA
Lbs.	Lbs.	Lbs.	Lbs.	Lbs.
Lbs.	Lbs.	Lbs.	Lbs.	Lbs.
Lbs.	Lbs.	Lbs.	Lbs.	Lbs.

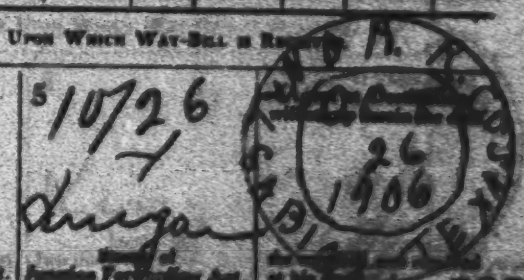
The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car Int. 22 Car No. 97728
TRAFFIC TO
Int. No. At
Int. No. At
Int. No. At

SHIPPER	MARKS, COMMENTS AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (G.R., C.R., Ref., Gtd., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
W.E. 60	No Sabine Texas Notify W.A. Powell Oct 24 Sabin		Ry. Lbr. S.C. Export to Europe	45000 819 00	4 15	16 10 122 80			
INTERSTATE									
OCT 31 1906									
STATION ACCOUNT CHECKED									
NOV 31 1906									
- M -									
REVISED									
B NOV 6 1906									

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM SHIPPER MUST STAMP IN THE SPACES BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED

Weight of Car and Contents	If private low cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the payment of such charges.	1	2	Stamp of Junction Forwarding Agt.	Stamp of Junction Forwarding Agt.	Stamp of Junction Forwarding Agt.	Stamp of Junction Forwarding Agt.	Stamp of Junction Forwarding Agt.
	Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.							



10 Sabine Gas

The use of Memorandum Way-Bills is positively forbidden.

If any changes are made in this way bill authority for same must be stated hereon.

1 VIA <i>Birmingham</i>	2 VIA	3 VIA	4 VIA	5 VIA	The use of Memorandum Way-Bills is positively forbidden. If any changes are made in this way-bill authorizing for same must be stated hereon.
<i>IND</i>					
Length <i>10</i> Ft. In.	Weight this Car at <i>Birmingham</i>	Stop this Car at <i>IND</i>		Car No. <i>IND</i>	
Marked Capacity <i>60</i> Lbs.	Loaded at <i>a'clock</i> M. Date		Car No. <i>IND</i>		

[illegible]

IN COLLECTIVE OWNERSHIP OF THE
THESE STATIONS AND DATE UPON WHICH WAY-BILL IS MADE

<p>Weight of Car and Contents</p>	<p>As prices for cars are used and varied charges are not applied on the way-bill, the way-bill and shown by evidence of the authority for the amount of such charges.</p>	<p>1</p>	<p>2</p>	<p>Freight Office 1906 26 27</p>	<p>3</p>	<p>10/27</p>	<p>1906</p>
<p>Time of day only is entering into a contract</p>	<p>Forwarding Agents will be held responsible for any loss of charges that may occur by failure comply with these instructions.</p>	<p>Forwarding Agent</p>	<p>Forwarding Agent</p>	<p>Forwarding Agent</p>	<p>Forwarding Agent</p>	<p>Forwarding Agent</p>	<p>Forwarding Agent</p>

1 VIA <i>Brown</i> FUNCTION WITH <i>2nd</i> Rv.	2 VIA FUNCTION WITH Rv.	3 VIA FUNCTION WITH Rv.	4 VIA FUNCTION WITH Rv.	5 VIA FUNCTION WITH Rv.
*When a forward gear is set, and the clutch is released, the car will start to move. The clutch should be released in this case without to avoid any possible damage to the engine and the clutch mechanism.			Weigh this Car at <i>Brown</i> (Stop this Car at <i>INTERC</i> For	
Length of Car Ft. In. Marked Capacity of Car Lbs.				

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Car Int. **3092** TRANSFERRED TO Car No. **HEW 2**

Int.	No.	At
Int.	No.	At
Int.	No.	At

Additional Charges are _____ W.B. No. _____ Dated _____ 190_____

SHIPPER Address, Line Reference, Original Car and Pay-Roll Number and Point of Departure	MARKS, CONNECTIONS AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Ord., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
W.C. 110 Sabine Iron Co. N.Y. LaPorte Co. Ltd - Rgt. Lbr. D				48000 48000	15 15	72 00			
<p>Franklin D. Roosevelt Library New York City Oct 27 1916 48000</p> <p>RECEIVED OCT 27 1916 LOCAL FREIGHT BOSTON</p>				<p>OCT 27 1916 STATION ACCOUNT CHECKED NOV 7 1916 M</p> <p>REVISED B. NOV 7 1916</p> <p>Recd 12 N.O.R.R. YARD OCT-27-1916</p>					

AGENTS AT DESTINATION STATIONS RECEIVING THE WAY-BILL FROM CONDUCTOR OF THE NEXT STAGE IN THE SPACE BELOW, IN COMPLYING ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED.

Height of Car and Contents

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding Agent will be held responsible for any loss or charges that may occur by failure to comply with these instructions.

1

State of
London Forwarding Agency

Function Forwarding App

4

1

Junction Forwarding Agent

Agents at Destination
will receive herein the date

the way bill was received at his station. **KQ**

566

Texarkana & Fort Smith Railway Company

WAY BILL FOR FREIGHT FROM

Chiliff

Days 17
Texas

TO Sabine

24

1 VIA	2 VIA	3 VIA	4 VIA	5 VIA
<p>ROUTE</p> <p>3mont</p> <p>JUNCTION WITH</p> <p>2nd RY.</p>	<p>JUNCTION WITH</p> <p>RY.</p>	<p>JUNCTION WITH</p> <p>RY.</p>	<p>JUNCTION WITH</p> <p>RY.</p>	<p>JUNCTION WITH</p> <p>RY.</p>
<p>When a through rate is used, and the shipment is to be collected at one point, the only station must be shown in the car's name, in order to avoid confusion with other shipments to the same point in which it arrives.</p>	<p>Length of Car</p> <p>Feet</p> <p>Inches</p>	<p>Weight this Car at</p> <p>3mont</p>	<p>Stop this Car at</p> <p>STATE</p>	<p>Car Int. 403</p> <p>Car No. H. J. C.</p>
<p>Marked Capacity of Car</p> <p>Lbs.</p>	<p>Loaded at</p> <p>o'clock</p> <p>M. Date</p> <p>1906</p>	<p>Int. No. At</p>	<p>Int. No. At</p>	<p>Int. No. At</p>

The use of Memorandum Way-Bills is positively forbidden.
If any changes are made in this way-bill authority for same must be stated hereon.

Additional Charges see

W.B. No.

Dated

190

SHIPPER Showing Line Reference, Original Car and Way-Bill Number and Point of Shipment	MARKS, CONSIGNEE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Gid., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
S. J. Co	W. A. Powell Co Ltd Rgh. Lbr.			40000	#	16.60			
	Sabine			471.00	15	70.65			
	24								
	Recd. T&F R.R.								
	YARD								
	11 2 1906								
	Beaumont, Tex								
	Export to Europe								
	3								

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM CONNECTING LINES MUST STAMP IN THE SPACES BELOW, IN CONSECUTIVE ORDER, THE NAMES OF THEIR STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED.

<p>Weight of Car and Contents</p> <p>1</p> <p>Stamp of Junction Forwarding Agt.</p>	<p>If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.</p> <p>Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.</p> <p>2</p> <p>Stamp of Junction Forwarding Agt.</p>	<p>3</p> <p>Stamp of Junction Forwarding Agt.</p>	<p>4</p> <p>Stamp of Junction Forwarding Agt.</p>	<p>5</p> <p>Stamp of Junction Forwarding Agt.</p>
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PORT
ARTHUR
ROUTE

Texarkana & Fort Smith Railway Company.

WAY BILL FOR FREIGHT FROM

Oruliff 24 / 2 TO *Sabine 24.*

Date

Stamp must not be used to indicate weight

1906

Series

2071

No.

2

Stamp must not be used for name of station

The use of Memorandum Way-Bills is positively forbidden.

If any changes are made in this way-bill authority for same must be stated hereon.

Weighted at

ROUTE

1 VIA *Bmont*
JUNCTION WITH
Ino Rv.

2 VIA
JUNCTION WITH

3 VIA
JUNCTION WITH

4 VIA
JUNCTION WITH

5 VIA
JUNCTION WITH

Gross *80* Lbs.

Tare *80* Lbs.

Net *80* Lbs.

*When a through rate is used and the shipment is to be re-billed as shown, the subdivisions must be shown in the way-bill in such order, ending opposite each particular line initial where used in which it occurs.

Length of Car *60* Lbs.

Marked Capacity of Car *60* Lbs.

Weight this Car at *Bmont*

Stop this Car at

For *IN*

Loaded at *o'clock* M. Date

Car Int. *20032*

Car No. *LU*

TRANSFERRED TO

Int. No. At

Int. No. At

Int. No. At

For Additional Charges see

W.B. No.

Dated

190

Loaded at

o'clock

M. Date

Int. No. At

Int. No. At

Int. No. At

SHIPPER Connecting Line Reference, Original Car and Way-Bill Number and Point of Shipment	MARKS, COMMERCE AND DESTINATION	No. of Packages	ARTICLES AND CLASSIFICATION CONDITIONS (O.R., C.R., Ref., Gen., Etc.)	WEIGHT	RATE AND AUTHORITY	FREIGHT CHARGES	ADVANCES	PREPAID	PREPAID BEYOND
<i>J. S. Co</i>	<i>40 Sabine Truss Co.</i>		<i>Rgh Lbr.</i>	<i>40000</i>	<i># 16-00</i>				
	<i>Sabine, Tex.</i>		<i>Shl</i>	<i>65800</i>	<i>15-98 70</i>				
	<i>Ntly. W. A. Powell, As. Ltd.</i>								
	<i>Agent at Station</i>								
	<i>Actual Gross 917</i>								
	<i>Tare 259</i>								
	<i>Net 658</i>								
	<i>Export to Europe</i>								
	<i>RECD. T & N O.R.R.</i>								
	<i>YARD</i>								
	<i>11 9 1906</i>								
	<i>RECEIVED</i>								
	<i>NOV 8</i>								
	<i>RECEIVED</i>								
	<i>NOV 8</i>								

NOV. 5 1906
STATION ACCOUNT
CHECKED
NOV. 8 1906
-M-

REVISED
NOV 8

AGENTS AT JUNCTION STATIONS RECEIVING THIS WAY-BILL FROM CONNECTING LINES MUST STAMP IN THE SPACES BELOW IN REVERSE ORDER, THE NAMES OF THE STATIONS AND DATE UPON WHICH WAY-BILL IS RECEIVED

Weight of Car and Contents

If private line cars are used and rental charges are not applied on the way-bill, the way-bill must show by endorsement the authority for the absence of such charges.

Forwarding Agent will be held responsible for any loss of charges that may occur by failure to comply with these instructions.

1

RECEIVED
NOV 8 1906
OFFICE TEXAS

RECEIVED
NOV 8 1906
OFFICE TEXAS

RECEIVED
NOV 8 1906
OFFICE TEXAS

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

Stamp of Junction Forwarding Agt.

570

571

Interstate Commerce Commission, Washington.

Secretary's Office.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the document hereto attached is a correct statement of rates, and regulations governing same, shown in schedule more particularly therein described, filed with the said Interstate Commerce Commission on July 28, 1906.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 17th day of October, A. D. 1907.

[SEAL.]

EDW. A. MOSELEY,

Secretary of the Interstate Commerce Commission.

D 2, G. F. H.

Extract from Supplement No. 1 to Joint Lumber Tariff, Sunset Route (The Galveston, Harrisburg & San Antonio Ry., Texas & New Orleans Railroad), No. 28-H, (Supplement No. 10 to I. C. C. No. 551), Effective (Except as Noted) Advances, August 6, 1906, Reductions July 30, 1906.

Miscellaneous Rates (Page 7).

Item No.	Commodity.	From—	To—	Rate.
181 enclose 92 and 142.	Lumber and articles taking same rates, carloads, minimum weight 40,000 lbs.	Orange, Tex..... Beaumont, Tex. T. & N. O. stations, Rockland and south, also west of Beaumont, except Houston. T. & — O. stations north of Rockland to Nacogdoches, incl.....	Sabine Pass, Tex. Sabine..... Port Arthur, " Export other than Mexico.	75 75 75
182 enclose 102.	Lumber, etc., carloads.	K. C. S. Ry. points.	Sabine, Tex..... For export.	Cancel rates. Combinations of locals to apply.

*Shipments destined either port for local delivery and consumption regular tariff will apply, but if switched to docks, wharves or slips for export other than States or United States coast-wise, moving beyond the State of Texas, above provisions will apply.

No. 6071.

SABINE TRAM COMPANY
VS.
T. & N. O. RAILROAD COMPANY et al.

It is agreed by and between the parties to this cause, as follows:

(1) That the hereto attached "Joint Lumber Tariff Sunset Route I. C. C. No. 551" was filed with the Interstate Commerce Commission on, to-wit, April 27th, 1906, to take effect May 7th, 1906.

(2) That the hereto attached "Supplement No. 10 to 'I. C. C. No. 551' was filed with the Interstate Commerce Commission, on, to-wit, July 26th, 1906.

The agreement in this paragraph, however, is subject to this condition, to-wit, that if the plaintiff ascertains that its agreement to this fact is erroneous plaintiff shall have the right to withdraw the same, but in such case the defendants may offer a witness to testify and identify the same, whose testimony in regard to said supplement shall not be subject to the objection that the defendants have not offered the best evidence.

It is understood, however, that the plaintiff does not by this agreement admit that the evidence is relevant or material, which objections the plaintiff reserves the right to urge.

(3) It is further agreed and admitted that the Railroad Commission of Texas authorized or established and promulgated "Corrected Authority No. 76 hereto attached; the following general rule shown in item "2" page 3 of "Circular No. 766" issued by the Commission:

"2. The rate between two given points shall not in any case exceed the sum of the rates applying between such points and a point intermediate.";

And Circular No. 1169 hereto attached as to all of which the respective railroad companies affected thereby received the notice prescribed in Art. 4563 and the classification or schedule provided for in Article 4567 of the Revised Statutes of the State of Texas.

It is understood that the defendants do not intend hereby to waive any objections they may see fit to urge as to the relevancy or materiality of said rates and rule referred to above as being prescribed by the Railroad Commission of Texas.

Oct. 16 A. D. 1907.

GREER, MINOR & MILLER,
Attorneys for Sabine Tram Company.
PARKER & HEFNER,

Attorneys for T. & N. O. Railroad Company.

Attorneys for Texarkana & Fort Smith Railroad Co.

Houston & Texas Central Railroad

"SUNSET ROUTE"

"SUNSET ROUTE"

The Galveston, Harrisburg & San Antonio Ry.

Texas & New Orleans Railroad

Houston & Texas Central Railroad
Houston East & West Texas Railway
Houston & Shreveport Railroad

— IN CONNECTION WITH —

ARKANSAS SOUTHERN RY.
BEAUMONT, SOUTH LAKE & WHEATON RY.
EAST TEXAS AC.
EMILE DAIGLE BARGE LINE,
FREMONT & GULF RY.
COLORADO & SANTA FE RY.
JOHNSON, LAKE CITY & LEAVENWORTH R. R.
KANSAS CITY SOUTHERN RY.
KANSAS CITY SOUTHWESTERN RY.
LOUISIANA & ARKANSAS RY.
LOUISIANA RAILWAY & NAVIGATION CO.
LOUISIANA WESTERN R. R.
LOUISIANA NORTHWESTERN RY.

MONROE, LEWISIANA, & TEXAS R. R.
 MONROE, CAMDEN & BAY ARCADES RY.
 NANTUCKET STEAMSHIP RY.
 NORTHERN CALIFORNIA RY.
 NORTH PLATE RAILROAD
 OMAHA & NORTHWESTERN R. R.
 PANHANDLE RAILROAD RY.
 PINE BLUFF & ARCADIA RY.
 PORTLAND & WESTERN RY.
 RENO RIVER & GULF R. R.
 SALT LAKE, NORTHEAST & SOUTHEASTERN RY.
 SALT LAKE & GULF RAILWAY RY.
 ST. LOUIS & GULF RAILWAY RY.
 ST. LOUIS & NORTHWESTERN RY.
 ST. LOUIS & PORTLAND RY. OF TEXAS

—AND—

CHICAGO, ROCK ISLAND & GULF RY.
 CINCINNATI & SOUTHWESTERN RY.
 DENVER, BOMHALL & NEW ORLEANS RY.
 E. W. WOODS & DENVER CITY RY.
 E. W. WOODS & NEW ORLEANS RY.
 GAYLORD, HOWSTON & HENDERSON R. R.
 GULF, COLORADO & SANTA FE RY.
 H. H. HARRIS & BRANSON VALLEY R. R.
 INTERNATIONAL & GREAT NORTHERN R. R.
 KANSAS CITY, MISSOURI & OMAHA RY.
 KANSAS CITY, MISSOURI & OMAHA RY.
 KANSAS CITY, MISSOURI & OMAHA RY.

PACIFIC & NORTHERN TEXAS RY.
 PACIFIC RIVER RAILROAD.
 RIO GRANDE & EAGLE PASS RY.
 SAN ANTONIO & ARANSAS PAM RY.
 ST. LOUIS & NORTHERN RY. OF TEXAS.
 ST. LOUIS, DALLASVILLE & ALABAMA RY.
 ST. LOUIS, SAN FRANCISCO & TEXAS RY.
 SUGARLAND RAILWAY.
 SOUTHERN KANSAS RY. OF TEXAS.
 TEXAS MEXICAN RAILWAY.
 TEXAS SHORT LINE.

ST. LOUIS & SAN FRANCISCO R. R.
ST. LOUIS, WATKINS & GULF RY.
ST. LOUIS, & NORTHERN ARKANSAS RY.
ST. LOUIS, MEMPHIS & SOUTHEASTERN R. R.
TEXAS SOUTHERN RAILWAY.
TEXARKANA & F. SMITH RY.
TEXAS & GULF RAILROAD.
TEXAS & PACIFIC RAILWAY.
THOMPSON & NORTHEASTERN RY
TRINITY VALLEY RAILROAD.
VICTORIA, SERAPORT & PACIFIC RY.
WARREN & CINCINNATI PACIFIC RY.
WHEELER & LOUISIANA CENTRAL RY.

TEXAS & PACIFIC RAILWAY,
TEXAS MIDLAND RAILROAD,
TEXAS CENTRAL RAILROAD,
TEXAS CITY TERMINAL RT.,
TRINITY & BRASS VALLEY RT.,
VILACOCO, BRASS & NORTHERN RT.,
WATERFORD, MINERAL WELLS & NORTHERN-
MAN RT.,
WICHITA VALLEY RAILWAY,
WICHITA FALLS & OKLAHOMA RT.

JOINT LUMBER TARIFF

SUNSET ROUTE NO. 28-H
(Cancels No. 28-G.)

LOUISIANA WESTERN R. R. CO. { NO. 335
M. L. & T. R. R. & S. S. CO. {
(Cancel No. 264-D.)

H. E. & W. T. AND H. & S. NO. 28
(Canada No. 757)

O. & N. W. No. LL-101.
(Canada's No. LL-100).

Tex-Mexican No. 372-B.
(Canada No. 272-D)

Wichita Valley No. 116-B.
(Canada No. 116-D)

T. & B. V. No. 37-C.
(Cancels No. 37-B).

Texas Central No. 34-F.
(Cancels No. 34-E)

PL. W. & E. O. No. 486.
(Carroll's No. 415).

St. L. W. & O. No. 157.

St. L. S. P. & T. No. 346.
(Carnegie No. 186).

—APPLYING ON—

FROM

-TO-

LUMBER, SHINGLES, ETC.

Texas, Louisiana, Arkansas, Missouri and Indian Territory Milling Points

STATIONS SHOWN IN TEXAS

EFFECTIVE (except as noted) ADVANCES, May 7, 1966. REDUCTIONS April 19, 1966.

RATES IN CENTS PER 100 POUNDS.

ISSUED AT HOUSTON, TEXAS, APRIL 23, 1906.

E. A. JONES Houston, Texas
T. M., G. H. & S. A. H. & T. C.
H. E. & W. T. and H. & S. Ry.
H. C. REESE Dallas, Texas
A. G. F. A. H. & T. C. R. R.
J. R. CHERMAN Houston, Texas
A. G. F. A. G. H. & S. A. H. & T. C.,
H. E. & W. T. and H. & S. Ry.
T. G. REARD Houston, Texas
G. F. A. Texas & New Orleans R. R.
DAN JACOB L. W. & G. Ry.
DAN JACOB L. W. & G. Ry.

C. K. DONLAP Houston, Texas.
G. F. A. G. H. & S. A. H. & T. C.,
H. E. & W. T. and H. & W. Ry.
F. B. McKAY Terrell, Texas.
G. F. A. Texas Midland R. R.
W. P. STERLEY Ft. Worth, Texas.
G. F. A. Ft. W. & D. C. Ry.
J. E. W. FIELD Cleburne, Texas.
G. F. A. Trinity & Bracon Valley Ry.
E. MUMFENBERGER Laredo, Texas.
G. F. A. Texas Midland R. R.

INDEX TO STATIONS

STATIONS	Index No.	STATIONS	Index No.	STATIONS	Index No.	STATIONS	Index No.
G		H		I		J	
Adelphi River	470	Adelphi	1507	Adelphi	1507	Adelphi	1507
Adelphi	471	Adelphi	1508	Adelphi	1508	Adelphi	1508
Adelphi	472	Adelphi	1509	Adelphi	1509	Adelphi	1509
Adelphi	473	Adelphi	1510	Adelphi	1510	Adelphi	1510
Adelphi	474	Adelphi	1511	Adelphi	1511	Adelphi	1511
Adelphi	475	Adelphi	1512	Adelphi	1512	Adelphi	1512
Adelphi	476	Adelphi	1513	Adelphi	1513	Adelphi	1513
Adelphi	477	Adelphi	1514	Adelphi	1514	Adelphi	1514
Adelphi	478	Adelphi	1515	Adelphi	1515	Adelphi	1515
Adelphi	479	Adelphi	1516	Adelphi	1516	Adelphi	1516
Adelphi	480	Adelphi	1517	Adelphi	1517	Adelphi	1517
Adelphi	481	Adelphi	1518	Adelphi	1518	Adelphi	1518
Adelphi	482	Adelphi	1519	Adelphi	1519	Adelphi	1519
Adelphi	483	Adelphi	1520	Adelphi	1520	Adelphi	1520
Adelphi	484	Adelphi	1521	Adelphi	1521	Adelphi	1521
Adelphi	485	Adelphi	1522	Adelphi	1522	Adelphi	1522
Adelphi	486	Adelphi	1523	Adelphi	1523	Adelphi	1523
Adelphi	487	Adelphi	1524	Adelphi	1524	Adelphi	1524
Adelphi	488	Adelphi	1525	Adelphi	1525	Adelphi	1525
Adelphi	489	Adelphi	1526	Adelphi	1526	Adelphi	1526
Adelphi	490	Adelphi	1527	Adelphi	1527	Adelphi	1527
Adelphi	491	Adelphi	1528	Adelphi	1528	Adelphi	1528
Adelphi	492	Adelphi	1529	Adelphi	1529	Adelphi	1529
Adelphi	493	Adelphi	1530	Adelphi	1530	Adelphi	1530
Adelphi	494	Adelphi	1531	Adelphi	1531	Adelphi	1531
Adelphi	495	Adelphi	1532	Adelphi	1532	Adelphi	1532
Adelphi	496	Adelphi	1533	Adelphi	1533	Adelphi	1533
Adelphi	497	Adelphi	1534	Adelphi	1534	Adelphi	1534
Adelphi	498	Adelphi	1535	Adelphi	1535	Adelphi	1535
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Adelphi	506	Adelphi	1543	Adelphi	1543	Adelphi	1543
Adelphi	507	Adelphi	1544	Adelphi	1544	Adelphi	1544
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Adelphi	513	Adelphi	1550	Adelphi	1550	Adelphi	1550
Adelphi	514	Adelphi	1551	Adelphi	1551	Adelphi	1551
Adelphi	515	Adelphi	1552	Adelphi	1552	Adelphi	1552
Adelphi	516	Adelphi	1553	Adelphi	1553	Adelphi	1553
Adelphi	517	Adelphi	1554	Adelphi	1554	Adelphi	1554
Adelphi	518	Adelphi	1555	Adelphi	1555	Adelphi	1555
Adelphi	519	Adelphi	1556	Adelphi	1556	Adelphi	1556
Adelphi	520	Adelphi	1557	Adelphi	1557	Adelphi	1557
Adelphi	521	Adelphi	1558	Adelphi	1558	Adelphi	1558
Adelphi	522	Adelphi	1559	Adelphi	1559	Adelphi	1559

INDEX TO STATIONS.

[illegible]

APPLICATION OF RATES

TEXAS (INTRA-STATE) SHIPMENTS.

Item 1.

Lumber rates will apply on Lumber (except Cypress, Mahogany, Rosewood, Lignum Vitæ, Walnut, Cherry and Holly), Laths, Shingles (except Cypress), Grain Doors, Bed Slats, Telegraph and Telephone Cross Arms, Pins, Braces and Brackets, Sawed Cross Ties, Sawed Fence Posts, Wooden Paving Blocks, Wooden Pump Tubing, Doors, Blinds, Sash, Door and Window Frames and Common Mouldings, Screen Doors and Window Frames (for Door and Window Frames, wired), Carpenters' Mouldings, Cornices, Brackets, Wainscoting, Hand Rails, Balusters and similar inside finishing Lumber, straight or mixed carloads; Slaves, Heading, Hoops and Hoop Poles, straight or mixed carloads; Hewed Cross Ties, straight carloads, and Combination Wood and Wire Fencing, straight carloads.

Item 2.

INTER-STATE SHIPMENTS.

Lumber rates will apply on Lumber (except Woods of Value, Cypress and Poplar Lumber), also on the following articles when manufactured from Lumber (except Woods of Value, Cypress and Poplar Lumber), straight or mixed carloads:

Bed Slats.	Lath.	Telegraph and Telephone Cross Arms.
Blinds.	Piles.	Pins, Braces and Brackets.
Cedar Posts.	Piling.	Wooden Paving Blocks.
Common Mouldings.	Sash (if glazed, released).	Wooden Pump Tubing.
Doors.	Screen Doors and Window Frames or Doors and Window Frames, wired.	Balusters.
Door and Window Frames.	Shingles.	Carpenters' Mouldings.
Fence Posts.	Slaves and Headings.	Cornice Brackets.
Grain Doors.	Telegraph Poles.	Hand Rails.
Hoops.	Telephone Poles.	Wainscoting.
Hoop Poles.		And similar finished Lumber.

(See Items 4, 5, 6 and 7.)

Item 3.

WHITE CEDAR POLES.

White Cedar Poles, in carloads, transported between points on the Gulf, Colorado & Santa Fe Ry., St. Louis, San Francisco & Texas Ry., International & Great Northern R. R., Galveston, Harrisburg & San Antonio Ry., Fort Worth & Denver City Ry., Wichita Valley Ry., Wichita Falls & Oklahoma Ry., Texas & New Orleans R. R., Texas Southern Ry., Missouri, Kansas & Texas Ry. of Texas, San Antonio & Arkansas P&O Ry., Trinity & Brazos Valley Ry., Texas & Pacific Ry., St. Louis Southwestern Ry. of Texas and Chicago, Rock Island & Gulf Ry., locally and jointly, shall be subject to current Lumber rates.

Item 4.

CYPRESS LUMBER AND ARTICLES TAKING SAME RATES.

Cypress Lumber and articles manufactured of same, in straight or mixed carloads, or mixed with Pine, will be 2 cents higher than Pine rates. (See Items 5 and 6).

Item 5.

MORGAN'S LOUISIANA & TEXAS R. R.

Rates named ~~from~~ Morgan's Louisiana & Texas R. R. mills in Group 5 will apply on Cypress Lumber and articles described in Item 2 taking same rates, except Cypress Hewn Cross Ties. Should shipments of Pine Lumber and articles taking same rates be offered, rate for such shipments will be 2 cents per 100 pounds less than named in Group 5, provided rate shall not be less than 11½ cents per 100 pounds. Cypress Hewn Cross Ties will take "D" class rates.

Item 6.

LOUISIANA & ARKANSAS.

Rates on Cypress Lumber from Arkansas and other than M. L. & T. Louisiana Mills will be 2 cents higher than Pine Lumber rates, but not less than shown from M. L. & T. R. R. Mills.

Item 7.

COMBINATION WOOD AND WIRE FENCING.

Apply Lumber rates on Combination Wood and Wire Fencing from and to all points shown herein from K. C. S., L. W. and M. L. & T. Rys.

Item 8.

BURNETIZING AND CREOSOTING LUMBER AND TIES AT BEAUMONT.

A charge of \$5.00 per car in addition to the through rate from point of origin to point of destination will be made for the stop at Beaumont for the purpose of creosoting or burnetizing carload shipments of Lumber or Ties originating at mills on the Texas & New Orleans Railroad, destined to points in Texas.

Item 9.

MINIMUM WEIGHT.

Lumber and articles taking same rate, minimum carload weight 30,000 pounds, except where cars loaded to full capacity shall be less, in such cases actual weight shall govern.

When a reversal and refund are made, the refund shall be made in the form of a check payable to the order of the shipper. On such refund, the shipper shall be liable for the same. In addition, actual cost of transfer shall be charged, unless to be withheld and follow original rate.

Page 16.

GROUP NUMBER 10
AND RAILROAD MILLING POINTS FROM WHICH RATES APPLY.

Group No.	RAILROAD LOCATION	FROM
1	(T. & N. O. R. R., Main Line) points: Dallas-Sebine Division—Rockland and South, O. H. & R. A.—Galveston Division	All Milling Points.
2	T. & N. O. R. R., north of Rockland to Newgloch, incl.	West La Porte, Harrisburg, Seabrook (not to exceed Liberty rates.)
3	T. & N. O. R. R., north of Newgloch to Frankton	All Milling Points.
4	Louisiana Western R. R.	All Milling Points.
5	Morgan's Louisiana & Texas R. R.	All Milling Points.
6	Arkansas Southern Ry.	All Milling Points.
7	Beaumont, Sour Lake & Western Ry.	All Milling Points.
8	Eastern Texas Ry.	All Milling Points (except Beaumont).
9	Ennis Daugh Barge Line	All Milling Points.
10	Freemont & Gulf Ry.	Butlers, La., via Houma, La. (To make rates to all Texas points add 10 cents per 100 pounds to rate applying from Houma, La.)
11	Gulf, Colorado & Santa Fe Ry.	All Milling Points.
12	Houston East & West Texas Ry.	All Milling Points. (Includes former G. B. & E. C. and O. B. & G. N. points.)
13	Houston & Shreveport R. R.	All Milling Points.
14	International & Great Northern R. R.	All Milling Points.
15	Jonesboro, Lake City & Eastern R. R.	All Milling Points.
16	Jonesboro, Lake City & Eastern R. R.	Kathlamet, Ark.
17	Kansas City Southern Ry. (Via Beaumont.)	Big Lake.....Ark. Black Oak.....Ark. Bowman..... Crushaw..... Ananias.....La. Ayers..... Benson..... Black Bayou..... Lumber Co..... Blanchard..... Bon Ami..... Brent..... Burt..... Christi..... Cays..... Converse..... Cooper's..... DeQuincy..... DeRider..... DeSoto..... Doods Jr..... Edgewood Jr..... Allen.....Ark. Ashdown..... Burlingame..... Doubling Spur..... Avon.....Ark. Barnard..... Colemans..... Cove..... DeQueen.....
18	Kansas City Southern Ry. (Via Beaumont.)	Big Lake.....Ark. Black Oak.....Ark. Bowman..... Crushaw..... Ananias.....La. Ayers..... Benson..... Black Bayou..... Lumber Co..... Blanchard..... Bon Ami..... Brent..... Burt..... Christi..... Cays..... Converse..... Cooper's..... DeQuincy..... DeRider..... DeSoto..... Doods Jr..... Edgewood Jr..... Allen.....Ark. Ashdown..... Burlingame..... Doubling Spur..... Avon.....Ark. Barnard..... Colemans..... Cove..... DeQueen.....
19	Kansas City Southern Ry. (Via Beaumont.)	Big Lake.....Ark. Black Oak.....Ark. Bowman..... Crushaw..... Ananias.....La. Ayers..... Benson..... Black Bayou..... Lumber Co..... Blanchard..... Bon Ami..... Brent..... Burt..... Christi..... Cays..... Converse..... Cooper's..... DeQuincy..... DeRider..... DeSoto..... Doods Jr..... Edgewood Jr..... Allen.....Ark. Ashdown..... Burlingame..... Doubling Spur..... Avon.....Ark. Barnard..... Colemans..... Cove..... DeQueen.....

Note that rates from Lake Charles and West Lake to local points on Sunset and H. & T. C. lines will only apply via Louisiana Western R. R.

Item 16.—Continued.

GROUP NUMBERS AND RAILROAD MILLING POINTS FROM WHICH RATES APPLY.

Group No.	RAILROAD LOCATION	FROM
41	St. Louis & San Francisco R. R.	Albion..... I. T.
		Antlers..... Ark.
		Arken..... I. T.
		Arkinda..... Ark.
		Ashdown..... " "
		Avoca..... " "
		Baldwin..... " "
		Beatty..... " "
		Bengal..... I. T.
		Bennington..... Ark.
		Bentonville..... I. T.
		Boggy..... I. T.
		Bonanza..... Ark.
		Bozwell..... I. T.
		Brashears..... Ark.
		Brentwood..... " "
		Burna..... I. T.
		Butler..... I. T.
		Cameron..... " "
		Caston..... " "
		Cedars..... Ark.
		Centertown..... I. T.
		Clayton..... I. T.
		Chester..... Ark.
		Combs..... I. T.
		Compton..... I. T.
		Crosses..... Ark.
		Delaney..... Ark.
		Dickson..... I. T.
		Dodge..... I. T.
		Durham..... Ark.
		Dutton..... " "
		Elkins..... " "
		Fayetteville..... " "
		Fayette Jet..... " "
		Folsom..... I. T.
		Foreman..... Ark.
		Forney..... I. T.
		Ft. Smith..... Ark.
		Ft. Townsend..... I. T.
		Garfield..... Ark.
		Garvin..... I. T.
		Goodland..... " "
		Gravett..... Ark.
		Greenland..... " "
		Grove..... I. T.
		Gulley..... Ark.
		Hackett..... I. T.
		Hamden..... I. T.
		Harrington..... " "
		Harris..... Ark.
		Hill..... " "
		Hiwassee..... " "
		Hope..... Ark.
		Hugo..... I. T.
		Huntington..... I. T.
		Idabell..... I. T.
		Jenson..... Ark.
		Johnson..... " "
		Kavanaugh..... I. T.
		Kellond..... I. T.
		Kianichi..... Ark.
		Kings..... I. T.
		Kosoma..... I. T.
		Lancaster..... Ark.
		Ledore..... I. T.
		Lilburn Switch..... Ark.
		Long..... I. T.
		Lowell..... " "
		Manfield..... " "
		McNabb..... Ark.
		Meadows..... " "
		Montreal..... " "
		Mountainburg..... I. T.
		Moyens Switch..... I. T.
		Oak Park..... Ark.
		Orton..... " "
		Osborne..... " "
		Patrick..... " "
		Pettigrew..... Ark.
		Porter..... I. T.
		Poteau..... I. T.
		Richmond..... Ark.
		Rogers..... " "
		Rudy..... " "
		Sawyer..... I. T.
		Seligman..... Mo.
		Smelter..... Ark.
		Soper..... I. T.
		Southwest City Mo.
		Springdale..... I. T.
		Stanley..... I. T.
		St. Paul..... I. T.
		Talhina..... I. T.
		Thompson..... Ark.
		Tuskahoma..... I. T.
		Van Buren..... Ark.
		Vallent..... I. T.
		Wadena..... I. T.
		Walkers..... Ark.
		Ward..... " "
		West Fork..... " "
		Winalow..... I. T.
		Wisker..... I. T.
		Wooley..... Ark.
42	St. Louis, Memphis & Southeastern R. R.	Arbillion..... Ark.
		Advance..... Mo.
		Arbor..... Mo.
		Brownwood..... " "
		Boyer..... " "
		Blomeyer..... " "
		Beechwald..... " "
		Booser..... Ark.
		Biggers..... Mo.
		Benson..... " "
		Blytheville..... Mo.
		Carters..... " "
		Canapolis..... " "
		Canadys..... " "
		Castor..... " "
		Cape Girardeau..... " "
		Conran..... " "
		Carlston..... " "
		Caruthersville..... " "
		Delta..... Mo.
		Dale..... " "
		Delele..... Ark.
		Datto..... Mo.
		Elmore..... Mo.
		Eagletoe..... " "
		E. Poplar Bluff Mo.
		E. Pochontas Ark.
		Ferry..... Mo.
		Foley..... " "
		Green Cox..... " "
		Glenn..... " "
		Godair..... " "
		Grassy Bayou..... " "
		Greene..... Ark.
		Holladay..... Mo.
		Headquarters..... " "
		Hodges..... " "
		Harvell..... " "
		Hart..... " "
		Halls..... " "
		Holland..... " "
		Idlewild..... " "
		Johnson Spur..... " "
		Johnson..... Ark.
		Leming..... Mo.
		La Font..... " "
		Leeterville..... Ark.
		Moons..... " "
		Mingo..... " "
		Miller..... Mo.
		McMullen..... " "
		Marston..... " "
		Matthews..... " "
		Mounds..... Ark.
		Manson..... " "
		Naylor..... Mo.
		Oakward..... " "
		Ojibway..... " "
		Oran..... Ark.
		Pittman..... Mo.
		Pocahontas..... Mo.
		Pond..... " "
		Puxie..... " "
		Poplar Bluff..... " "
		Port's Mill..... " "
		Paw Paw Jet..... " "
		Portageville..... " "
		Pokona..... " "
		Ranney..... " "
		Rock Levee..... " "
		Romine Springs..... " "
		Rombauer..... " "
		Running Lake Ark.
		Rayno..... Mo.
		Sturdivant..... Mo.
		Sharpboro..... " "
		Shasley..... " "
		Sutton..... " "
		Seymour..... " "
		Schlags..... " "
		Sikaton..... " "
		Steele..... Mo.
		State Line Mo.
		Success..... Ark.
		Skinner..... " "
		Shannon..... Mo.
		Teske..... " "
		Toga..... " "
		Treesville..... " "
		Terry..... " "
		Upalika..... " "
		Williamsville..... " "
		Wappapello..... " "
		Walnut Ridge Ark.
		Wolverton..... " "
		Yarbro..... " "
43	St. Louis & Gulf Ry.	Pascala..... Mo.
		Richardson..... " "
		Sand Hill..... " "
		Senath..... " "
		Swinton..... " "
		Salcedo..... " "
		Tadipooa..... " "
		Vanduser..... " "
		White Oak..... " "
		Zeta..... " "
		Zadock..... " "
		Zelma..... " "
		La Valle..... Mo.
		Lewis' Mill..... Ark.
		Leechville..... Mo.
		Manning..... " "
		Morley..... " "
		Morehouse..... " "
		Maulaby..... " "
		McKay..... " "
		Parma..... " "
		Paragon..... " "
		Pine City..... " "
		Paulding..... " "
		Caligae..... Mo.
		Clay Root..... " "
		Castor Bridge..... " "
		Deering..... " "
		Frederick..... " "
		Gideon..... " "
		Gibson..... " "
		Green Brier..... " "
		Harbinson..... " "
		Holcomb..... " "
		Ipsley..... " "
		Johnson Switch..... " "
		Kennett..... " "

(14)	E. A. & A. P. Ry.	All Milling Points.	Routes.
(15)	St. L. R. & M. Ry.	All Milling Points.	Routes.

FROM MILLING POINTS ON TEXAS & NEW ORLEANS R. R., LOUISIANA WESTERN R. R., MORGAN'S LOUISIANA & TEXAS R. R., HOUSTON EAST & WEST TEXAS RY. AND HOUSTON & SHREVEPORT R. R.

Stations to which Rates Apply	Stations from which Rates Apply	Route Via
(15) Big Sandy Hillsboro St. L. S. W. Ry. of Texas McGregor Tyler Texarkana to Mt. Pleasant, incl. Big Cypress to Gatesville, incl. Clay Ridge to Lufkin, incl. Orphans' Home to Rock Quarry, incl. Carrollton Hodge Wolf City Commerce Sulphur Spgs Wylie Greenville Whitewright Winfield to Sherman, incl. Ft. Worth to Neyland, incl. Big Sandy Hillsboro Tyler West of Corsicana to Brandon, incl. North of Corsicana to Hubbard City, incl. East of Corsicana to Burlingame, incl.	Mills on T. & N. O. north of Beaumont.	Athens. Dallas Houston, H. & T. C. and Corsicana.
Carrollton Greenville Sulphur Spgs. Commerce Hodge Wylie West of Plano to east of Smithfield, incl. East of Plano, to Neyland, incl. Ridgeway McGregor. East of Waco to Seely, incl. West of Waco to Gatesville, incl.	Other Milling Points, except H. E. & W. T. and H. & S.	Houston, H. & T. C. and Plano. Houston, H. & T. C. and Waco. Houston, H. & T. C. and Sherman. Lufkin.
Wolf City, Whitewright. East of Sherman to Fairlie, incl. All St. L. S. W. of Texas Points.	H. E. & W. T. and H. & S. Mills.	Sugarland.
(16) All Stations. Sugarland Ry.	All Milling Points.	Kountze and G. C. & S. F.
(17) So. Kans. Ry. of Texas	Mills on T. & N. O. north of Beaumont.	Houston and G. C. & S. F.
All Stations.	Mills on T. & N. O. west of Beaumont.	Cleveland and G. C. & S. F.
(18) Texas-Mexican Ry.	Other Milling Points.	Beaumont and G. C. & S. F.
All Stations.	All Milling Points.	Houston, S. A. & A. P. and Alice.
(19) Texas Short Line.	Mills on T. & N. O. north of Beaumont.	Dallas, M. K. & T. and Alba.
All Stations.	Other Milling Points.	Houston, H. & T. C., Dallas, M. K. & T. and Alba.
(20) Texas & Pacific Ry.		Dallas, H. & T. C. and Sherman.
Whitesboro to Texarkana, incl.	Mills on T. & N. O. north of Beaumont.	Dallas and T. & P.
Sulphur and south. Handley and east.		Dallas H. & T. C. and Ft. Worth.
Manchester and West. North of Fort Worth to Collinsville. Whitesboro to Texarkana, incl.	Other Milling Points where rates are shown	Houston, H. & T. C. and Sherman.
Sulphur and South, Hanley and east.		Houston, H. & T. C. and Dallas.
Manchester and West. North of Ft. Worth to Collinsville, incl.		Houston, H. & T. C. and Ft. Worth.
(21) Texas Midland R. R.	Mills on T. & N. O. north of Beaumont.	Kaufman.
All Stations.	Other Milling Points.	Houston, H. & T. C. and Ennis.
(22) Texas Central R. R.	Mills on T. & N. O. north of Beaumont.	Dallas, H. & T. C. and Waco.
All Stations.	Other Milling Points.	Houston, H. & T. C. and Waco.
(23) Texas City Terminal Ry.	All Milling Points.	Houston, G. H. & S. A.—Galveston Division, and Texas City Junction.

Texas Midland R. R.
Texas Central R. R.
T. & N. O. R. R.
T. & N. O. R. R.
T. & N. O. R. R.

Item 20.

FROM MILLING POINTS ON GULF, COLORADO & SANTA FE RY, GULF, BEAUMONT & KANSAS CITY RY, AND GULF, BEAUMONT & NORTHERN RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
Sunset Route. Beville Cuero Eagle Lake All T. & N. O. R. R. Stations	Luling San Antonio All Mills All Mills Cleveland and east. West of Cleveland	Rosenberg. Kountze. Kountze. Navasota, H. & T. C. and Houston. Brenham. Dallas. Navasota.
Other Sunset Stations		
H. & T. C. R. R. Giddings, Elgin, Austin, McNeil. Denison, Ennis, Lancaster. McKinney, Plano, Waxahachie Other Stations		

Item 21. FROM MILLING POINTS ON INTERNATIONAL & GREAT NORTHERN R. R.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
Sunset Route. Elstonia, Gonzales, Luling. El Paso to Sierra Blanca, incl. T. & N. O.—Dallas-Sabine Stations. Other Stations		San Antonio. Jacksonville. Houston. Austin. Hearne. Houston.
Giddings and Elgin. Corcoran, Navasota. Waco, Denison, Dallas. Ennis, Ft. Worth, Lancaster. Midlothian, McKinney, Plano, Sherman. Other Stations		
H. & T. C. R. R.		
All Stations	All Milling Points.	Houston and Blessing.

Item 22. FROM MILLING POINTS ON LOUISIANA RY. & NAVIGATION CO.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
All Stations on T. & N. O.—Dallas-Sabine Division. G. H. & S. A. Ry. H. & T. C. R. R.		Shreveport, H. E. & W. T. and Nacogdoches Shreveport, H. E. & W. T. and Houston.

Item 23. FROM MILLING POINTS ON LIVINGSTON & SOUTHEASTERN RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
G. H. & S. A. Ry. T. & N. O. R. R. H. & T. C. R. R. C. R. I. & G. Ry. Ft. W. & D. C. Ry. Ft. W. & R. G. Ry. G. H. & H. R. R. G. C. & S. F. Ry. and operated lines, viz: P. & N. T. Ry., P. R. R. R. and So. Kan. Ry. of Texas. H. & B. V. R. R. I. & G. N. R. R. K. C. M. & O. Ry. of Texas. M. R. & T. Ry. of Texas. R. G. & E. P. Ry. S. A. & A. P. Ry. St. L. S. F. & T. Ry. St. L. S. W. Ry. of Texas. St. L. B. & M. Ry. So. Kan. Ry. of Tex. Sugarland Ry. Texas & Pacific Ry. Texas Central R. R. Texas Midland R. R. Texas Mexican Ry. T. & B. V. Ry. V. B. & N. Ry. Wichita Valley Ry. W. F. & O. Ry. W. M. W. & N. W. R. R.		Livingston and same Junctions as from Livingston proper.

T. & S. Branch Mills

Corrigan, Cleveland and G. C. & S. Y.

Corrigan and Houston.

FROM MILLING POINTS ON MISSOURI, KANSAS & TEXAS RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
Sugarland Ry.		Corrigan and Houston.
S. A. & A. P. Ry.		Corrigan.
St. L. S. W. Ry. of Tex.		Corrigan, Shreveport, M. K. & T. and Ft. Worth.
St. L. S. F. & T. Ry.		Houston, S. A. & A. P. and Sinton.
St. L. B. & M. Ry.		Corrigan, Houston, S. A. & A. P. and Alice.
Texas Mexican Ry.		Corrigan, Houston, M. K. & T. and Waco.
Texas Central R. R.	T. & S. Branch Mills.	Corrigan, Shreveport and M. K. & T.
Texas Short Line.		Corrigan, Houston and I. & G. N.
Texas & Pacific Ry.		Corrigan, Shreveport and M. K. & T.
Texas Midland Ry.		Corrigan, Houston and I. & G. N.
V. B. & N. Ry.		Corrigan, Shreveport and M. K. & T.
W. M. W. & N. W. R. R.		
Wichita Valley Ry.		
W. F. & O. Ry.		

FROM MILLING POINTS ON NACOGDOCHES SOUTHEASTERN RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
G. H. & S. A. Ry.		
T. & N. O. R. R. (points west of Jacksonville).		
H. & T. C. R. R.		
C. R. I. & G. Ry.		
Ft. W. & D. C. Ry.		
Ft. W. & R. G. Ry.		
G. H. & H. B. R.		
G. C. & S. F. Ry. and operated lines, viz:		
P. & N. T. Ry., Pecos River R. R. and So. Kan. Ry. of Tex.		
H. & B. V. R. R.		
I. & G. N. R. R.		
K. C. M. & O. Ry.		
M. K. & T. Ry. of Tex.		
R. G. & E. P. Ry.		
So. Kan. Ry. of Tex.		
St. L. S. F. & T. Ry.		
S. A. & A. P. Ry.		
St. L. S. W. Ry. of Tex.		
St. L. B. & M. Ry.		
Sugarland Ry.		
Texas & Pacific Ry.		
Texas Central R. R.		
Texas Mexican Ry.		
Texas Midland R. R.		
T. & B. V. R. R.		
Wichita Valley Ry.		
W. F. & O. Ry.		
W. M. W. & N. W. R. R.		
All Stations except Borumont.		Nacogdoches and same Junctions as from Nacogdoches proper.

FROM MILLING POINTS ON ORANGE & NORTHWESTERN RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route Via.
G. H. & S. A. Ry.		
T. & N. O. R. R.		
H. & T. C. R. R.		
Ft. W. & D. C. W. V. and W. F. & O. Rys.		
Ft. W. & R. G. Ry.		
H. & B. V. Ry.		
M. K. & T. Ry. of Texas.		
S. A. & A. P. Ry.		
Sugarland Ry.		
St. L. B. & M. Ry.		
St. L. S. W. Ry. of Texas.		
St. L. S. F. & T. Ry.		
Texas Mexican Ry.		
Texas Central R. R.		
Texas Short Line.		
T. & B. V. Ry.		
Texas & Pacific Ry.		
All Milling Points.		Orange and same Junction as from Orange proper.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route via
Sunset Route.		
T. & N. O.—Dallas-Sabine Division.	Milling Points named in Group No. 41.....	Sherman, H. & T. C. and Dallas.
Other Sunset Route Points.		
H. & T. C. R. R.	Group No. 40.....	Sherman, H. & T. C. and Houston.
O. H. & S. A. Ry.		
T. & N. O. Main Line Points.	Group No. 40.....	Paris, Texas, Midland, Ennis, H. & T. C. and Houston; or Paris, G. C. & S. F., Dallas, H. & T. C. and Houston.
T. & N. O.—Dallas-Sabine Division.		
H. & T. C. R. R.		Paris, Texas, Midland and Kaufman; or Paris, G. C. & S. F. and Dallas.
		Paris, Tex., Mid. and Ennis, or Paris, O. C. & S. F. and Dallas.

Item 32. **FROM MILLING POINTS ON ST. LOUIS & GULF RY. AND ST. LOUIS MEMPHIS & SOUTHEASTERN R. R.**

Stations to which Rates Apply.	Stations From which Rates Apply.	Route via
T. & N. O.—Dallas-Sabine Division.	Milling Points in Groups 42 and 43.....	Sherman, H. & T. C. and Dallas.
H. & T. C. R. R.		

Item 33. **FROM MILLING POINTS ON TEXARKANA & FT. SMITH RY. AND KANSAS CITY SOUTHERN RY.**

Stations to which Rates Apply.	Stations From which Rates Apply.	Route via.	
C. R. I. & O. Ry.....	All Milling Points.....	Beaumont and same Junctions as on ship- ments originating at Beaumont.	
Ft. W. & D. C.....		Beaumont, Houston and H. & T. C.	
Ft. W. & R. O.....		Beaumont and same Junctions as on ship- ments originating at Beaumont.	
G. H. & H. R. R.....		Houston.	
H. & B. V. R. R.....		Beaumont and same Junctions as on ship- ments originating at Beaumont.	
H. & T. C. R. R.....		Beaumont, Houston and H. & T. C.	
I. & G. N. R. R.....		Beaumont and same Junctions as on ship- ments originating at Beaumont.	
M. E. & T. Ry. of Texas.....		Beaumont, Houston and H. & T. C.	
Sunset Route.....			
S. A. & A. P. Ry.....		Beaumont and same Junctions as on ship- ments originating at Beaumont.	
St. L. B. & M. Ry.....	Beaumont, Houston and H. & T. C.		
St. L. S. F. & T. Ry.....	Beaumont and same Junctions as on ship- ments originating at Beaumont.		
T. & B. V. R. R.....	Beaumont and same Junctions as on ship- ments originating at Beaumont.		
Texas-Mexican Ry.....	Beaumont, Houston and H. & T. C.		
Texas Central R. R.....	Beaumont and same Junctions as on ship- ments originating at Beaumont.		
Wichita Valley Ry.....	Beaumont, Houston and H. & T. C.		
W. F. & O. Ry.....	Beaumont, Houston and H. & T. C.		

Item 34. **FROM MILLING POINTS ON TIMPSON & NORTHWESTERN RY.**

Stations to which Rates Apply.	Stations From which Rates Apply.	Route via
G. H. & S. A. Ry.	All Milling Points.....	Timpson and same Junctions as from Timpson proper.
T. & N. O. R. R.		
H. & T. C. R. R.		
C. R. I. & G. Ry.		
Ft. W. & D. C. Ry.		
Ft. W. & R. G. Ry.		
G. H. & H. R. R.		
G. C. & S. F. Ry.		
H. & B. V. R. R.		
I. & G. N. E. R.		
M. E. & T. R. R.		
P. & N. T. Ry.		
Pecos River Ry.		
R. G. & E. P. Ry.		
St. L. S. F. & T. Ry.		
St. L. B. & M. Ry.		
S. A. & A. P. Ry.		
Sugarland Ry.		
Texas Mexican Ry.		
Texas Short Line.		
Texas Midland Ry.		
Texas Central R. R.		
V. B. & N. Ry.		
W. M. W. & N. W. Ry.		
W. F. & O. Ry.		
Wichita Valley Ry.		

Item 40

FROM MILLING POINTS ON WOODWORTH & LOUISIANA CENTRAL RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route via
Ft. W. & D. C. Ry.....		
Ft. W. & R. G. Ry.....		Lamourie and same Junctions as on ship-
G. H. & H. R. Ry.....		ments from Lamourie proper.
H. & T. C. R. Ry.....		
H. & B. V. R. Ry.....		
I. & G. N. R. Ry.....		Lamourie and Houston
S. A. & A. P. Ry.....		
St. L. S. F. & T. Ry.....		
St. L. B. & M. Ry.....		
Sugarland Ry.....	All Milling Points.....	
Texas Midland R. R.....		
Texas Central R. R.....		
Texas City Terminal Ry.....		Lamourie and same Junctions as on ship-
Texas-Mexican Ry.....		ments from Lamourie proper.
V. B. & N. Ry.....		
W. F. & O. Ry.....		
Wichita Valley Ry.....		

Item 41

FROM MILLING POINTS ON WARREN & CORSICANA PACIFIC RY.

Stations to which Rates Apply.	Stations from which Rates Apply.	Route via.
C. R. I. & G. Ry.....		
Ft. W. & D. C. Ry.....		
Ft. W. & R. G. Ry.....		
G. H. & H. R. Ry.....		
G. C. & S. F. Ry.....		
H. & T. C. R. Ry.....		
H. & B. V. R. Ry.....		
I. & G. N. R. Ry.....		
M. K. & T. Ry.....		
P. & N. T. Ry.....		
Pecos River R. R.....		
R. G. & E. P. Ry.....		
Sunset Route.....		
S. A. & A. P. Ry.....		
Sugarland Ry.....		
St. L. S. W. Ry.....		
St. L. B. & M. Ry.....		
So. Kans. Ry., of Texas.....		
T. & B. V. Ry.....		
Texas Short Line.....		
Texas-Mexican Ry.....		
Texas Central R. R.....		
Texas Midland R. R.....		
Texas & Pacific Ry.....		
V. B. & N. Ry.....		
Wichita Valley Ry.....		
W. F. & O. Ry.....		
W. M. W. & N. W. Ry.....		
	All Milling Points (except McHenry).....	Warren and same Junctions as from Warren proper.
		Beaumont, Houston, H. & T. C., Dallas, Santa Fe and Weatherford.

TEXAS & NEW ORLEANS R. R.

From Groups.
(See Item 16).

Index No.	STATION TO (See Item 10 for Maxims).	7	24	46	15	6	38	17	47	4	5	29	33	42	55
		8	25	48	16	18	40								
64	Shawnee.....	11	26	49	19	22	41								
65	Huntington.....	12	27	50	20	23	42								
66	Dunagan.....	13	28	51	21	24	43								
67	Manion.....	14	29	52	22	25	44								
68	McNeil.....	15	30	53	23	26	45								
69	Poe.....	16	31	54	24	27	46								
70	Tubbe.....	17	32		25	28	47								
71	Cleaver.....	18	33		26	29	48								
72	Vim.....	19	34		27	30	49								
73	Hoy.....	20	35		28	31	50								
74	Hayward Trk.....														
75	Harrington Spur.....														
76	Dorr Junction.....														
77	Neogoches.....														
78	Bonita Junction.....														
79	Mahl.....														
80	Caro.....														
81	Trawick.....														
82	Dalmon.....														
83	Nivac.....														
84	Cushing.....														
85	Carlter.....														
86	Cade.....														
87	Scud.....														
88	Togo.....														
89	Redlaw.....														
90	Penta.....														
91	Gallatin.....														
92	Turney.....														
93	Jack-oreville.....														
94	Fry's Gap.....														
95	Rose.....														
96	Andy.....														
97	Lewis.....														
98	Frankton.....														
99	Clew.....														
100	Poyner.....														
101	La Rue.....														
102	Baxter.....														
103	Athens.....														
104	Stockard.....														
105	Eustace.....														
106	Ham.....														
107	Mebanks.....														
108	Cedar.....														
109	Kemp.....														
110	Lago.....														
111	Kaufman.....														
112	Daugherty.....														
113	Gastonia.....														
114	Crandall.....														
115	Bois d'Arc.....														
116	Seago.....														
117	Simonds.....														
118	Kleburg.....														
119	Ryle.....														
120	Elam.....														
121	Waintmore Junction.....														
122	Dallas.....														

No Agent. Freight must be prepaid.

From Group 31 mills rate 21 cents applies.

From Group 16 mills rate 22½ cents applies.

From Group 16 mills rate 23 cents applies.

From Groups 25, 36, 48, 60 and 82 rate not to exceed 17 cents per 100 pounds.

Rates from Brown's Switch, Willow Springs, Camps, Gladewater, Mineola and intermediate Texas & Pacific points shall not exceed 14 cents per 100 pounds to Cedar or Wantmore Junction, inclusive. Group 61 points to Kaufman, Athens and Jacksonville, 20 cents per 100 pounds.

175 Weekly Port.
176 Harwood
177 No Agent. Freight must be prepaid.
178 No Agent. Freight must be prepaid.
179 No Agent. Freight must be prepaid.
180 No Agent. Freight must be prepaid.

Index No.	STATION TO (See Item 10 for Maxima.)	From Groups (See Item 10.)										
		1	2	3	4	5	6	7	8	9	10	11
177	Nevilles	13	20									
178	Kohornot	14	46									
179	Botta	20	47									
180	Gonzalez	7	24	33	48	17	45	22	54			
181	Ivy	8	26	35	56							
182	Luling	11	27	56								
183	Gullman											
184	Sand Pit											
185	Kingbury											
186	Seguin											
187	Nolte											
188	Hilda											
189	Marion											
190	Cholo Valley											
191	Scherts											
192	Converse											
193	Kirby											
194	San Antonio											
195	San Antonio Stock Yards											
196	Martinez											
197	Sanders											
198	Adkins											
199	Carpenter											
200	Lavaria											
201	Anville											
202	Rutherford Springs											
203	Turner											
204	Stockdale											
205	Spadon											
206	Nixon											
207	Smiley											
208	Alason											
209	Wichers											
210	Maddox											
211	Wilder											
212	Leavette											
213	Noonan											
214	Dunlay											
215	Hondo											
216	D'Hanis											
217	Seco											
218	Sabinal											
219	Fuqua											
220	Chaffield											
221	Anger											
222	Dyalde											
223	Stucco											
224	Obi											
225	Clune											
226	Waldo											
227	Anascho											
228	Spofford											
229	Darling											
230	Paloma											
231	Olmos											
232	Dobsonburg											
233	Eagle Pass											
234	Kinney											
235	Pinto											
236	Standart											
237	Amanda											
238	Johnston											
239	Del Rio											
240	McKee											
241	Devil's River											
242	Feely											
243	Comstock											
244	Vialuet											
245	Sumis											
246	Dorso											
247	Langtry											

No Agent. Freight must be prepaid.

From Group
(See Item 16).

STATION TO
(See Item 10 for Maxima).

Index No.	Station	1	2	3	4	5	13	33	48	17	45	22	54
		12 26	14 46	20 47	24 49	25 53	27 55	17 1/2	18 1/2	18 1/2	18 1/2	18 1/2	18 1/2
316	Edna.....	17 1/2	18 1/2	22	17 1/2	20	17 1/2	18 1/2	18 1/2	18 1/2	18 1/2	20	22
317	El Toro.....	18 1/2	18 1/2	22	18 1/2	20	18 1/2	18 1/2	18 1/2	18 1/2	18 1/2	20	22
318	Ima.....												
319	Telfener.....												
320	Victoria.....												
321	Alice.....												
322	Raisin.....												
323	Cologne.....												
324	Fannin.....												
325	Gallad.....												
326	Labadie.....												
327	Chip.....												
328	Ho.....												
329	Reclaire.....												
330	Medio.....												
331	Foesta.....												
332	Beaville.....												
333	Abidag.....												
334	Coon.....												
335	Dunmore.....												
336	Felder.....												
337	Gerard.....												
338	Canabrate.....												
339	Cottendale.....												
340	Claro.....												
341	Bahry.....												
342	Boling.....												
343	Parkdale.....												
344	Don-Tol.....												
345	Pledge.....												
346	Forasen.....												
347	Podo.....												
348	Ashwood.....												
349	Groveland.....												
350	Brown's Spur.....												
351	Sugar Valley.....												
352	Van Vack.....												
353	Bay Prairie.....												
354	Caney.....												
355	Rugley.....												
356	Bowlingville.....												
357	Cedar Lane.....												
358	Atlant.....												
359	Hawkinsville.....												
360	Bucks Bayou.....												
361	Bay City.....												
362	Luckey.....												
363	Cortis.....												
364	Markham.....												
365	Buckeye.....												
366	Manita.....												
367	Widfield.....												
368	Blossing.....												
369	Pheasant.....												
370	Palacios.....												
371	Cuero.....												
372	Mooney.....												
373	Verhelle.....												
374	Thomaston.....												
375	Julia.....												
376	Nursery.....												
377	Craig.....												
378	Donati.....												
379	Guadalupe.....												
380	De Costa.....												
381	Placido.....												
382	Clarke.....												
383	Port Lavaca.....												

*No Agent. Freight must be prepaid,
*From Orange and Beaumont Texas, and West Lake
and Lake Charles, La., 13 1/2 cents per 100 lbs.

*Account water competition rate from Beaumont, Orange,
Lake Charles, West Lake, Morgan City, New Iberia, Patter-
son, Franklin and Jeanerette will be 5c. less than shown.

[illegible]

Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16).					Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16).				
		1	8	27	13	4			1	8	27	13	4
591	Hennetta	20	21 1/4	23 1/4	20	21 1/4	615	Giles	21 1/4	126	28	21 1/4	20
592	Edwards	20	21 1/4	23 1/4	20	21 1/4	616	Flows	21 1/4	126	28	21 1/4	20
593	Jolly	20	21 1/4	23 1/4	20	21 1/4	617	Lella	21 1/4	126	28	21 1/4	20
594	Wichita Falls	20	21 1/4	23 1/4	20	21 1/4	618	Clarendon	21 1/4	126	28	21 1/4	20
595	Iowa Park	20	21 1/4	23 1/4	20	21 1/4	619	Southard	21 1/4	126	28	21 1/4	20
596	Burk	20	21 1/4	23 1/4	20	21 1/4	620	Goodnight	21 1/4	126	28	21 1/4	20
597	Day	20	21 1/4	23 1/4	20	21 1/4	621	Claude	21 1/4	126	28	21 1/4	20
598	Electra	20	21 1/4	23 1/4	20	21 1/4	622	Washburn	21 1/4	126	28	21 1/4	20
599	Harold	20	21 1/4	23 1/4	20	21 1/4	623	Pullman	21 1/4	126	28	21 1/4	20
600	Otisunion	20	21 1/4	23 1/4	20	21 1/4	624	Amarillo	21 1/4	126	28	21 1/4	20
601	White	20	21 1/4	23 1/4	20	21 1/4	625	Sanborn	21 1/4	126	28	21 1/4	20
602	Vernon	20	21 1/4	23 1/4	20	21 1/4	626	Field	21 1/4	126	28	21 1/4	20
603	Wheatland	20	21 1/4	23 1/4	20	21 1/4	627	Ady	21 1/4	126	28	21 1/4	20
604	Chillicothe	20	21 1/4	23 1/4	20	21 1/4	628	Tacoma	21 1/4	126	28	21 1/4	20
605	Evans	20	21 1/4	23 1/4	20	21 1/4	629	Majenta	21 1/4	126	28	21 1/4	20
606	Quannah	20	21 1/4	23 1/4	20	21 1/4	630	Channing	21 1/4	126	28	21 1/4	20
607	Amon	20	21 1/4	23 1/4	20	21 1/4	631	Duncan	21 1/4	126	28	21 1/4	20
608	Gypsum	20	21 1/4	23 1/4	20	21 1/4	632	Harley	21 1/4	126	28	21 1/4	20
609	Kirkland	20	21 1/4	23 1/4	20	21 1/4	633	Twist	21 1/4	126	28	21 1/4	20
610	Childress	20	21 1/4	23 1/4	20	21 1/4	634	Dalhart	21 1/4	126	28	21 1/4	20
611	Cary	20	21 1/4	23 1/4	20	21 1/4	635	Matlock	21 1/4	126	28	21 1/4	20
612	Estline	20	21 1/4	23 1/4	20	21 1/4	636	Perico	21 1/4	126	28	21 1/4	20
613	Newlin	20	21 1/4	23 1/4	20	21 1/4	637	Texline	21 1/4	126	28	21 1/4	20
614	Memphis	20	21 1/4	23 1/4	20	21 1/4							

From Group 4, rate 23 1/4 c. applies.

From Group 4, rate 23 1/4 c. applies.

From Group 4, rate 24 1/4 c. applies.

From Group 4, rate 25 1/4 c. applies.

From Groups 4 and 13, rate 20 cents applies.

Item 46.

FISCO SYSTEM.

Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16).					Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16).				
		1	8	27	13	4			1	8	27	13	4
638	Ft. W. & E. G. Ry.	20	21 1/4	23 1/4	20	21 1/4	661	Brownwood Stock Yards	20	21 1/4	23 1/4	20	21 1/4
639	Belt Junction	20	21 1/4	23 1/4	20	21 1/4	662	Dalzell	20	21 1/4	23 1/4	20	21 1/4
640	Primrose	20	21 1/4	23 1/4	20	21 1/4	663	Sevilla	20	21 1/4	23 1/4	20	21 1/4
641	Mustang	20	21 1/4	23 1/4	20	21 1/4	664	Winchell	20	21 1/4	23 1/4	20	21 1/4
642	Alfred	20	21 1/4	23 1/4	20	21 1/4	665	Colorado River	20	21 1/4	23 1/4	20	21 1/4
643	Virgil	20	21 1/4	23 1/4	20	21 1/4	666	Mercury	20	21 1/4	23 1/4	20	21 1/4
644	Crescent	20	21 1/4	23 1/4	20	21 1/4	667	Placid	20	21 1/4	23 1/4	20	21 1/4
645	Chapin	20	21 1/4	23 1/4	20	21 1/4	668	Crothers	20	21 1/4	23 1/4	20	21 1/4
646	Waynes	20	21 1/4	23 1/4	20	21 1/4	669	Sellman	20	21 1/4	23 1/4	20	21 1/4
647	Granbury	20	21 1/4	23 1/4	20	21 1/4	670	Brady Stock Yards	20	21 1/4	23 1/4	20	21 1/4
648	Tolar	20	21 1/4	23 1/4	20	21 1/4	671	Brady Stock Yards	20	21 1/4	23 1/4	20	21 1/4
649	Bluffdale	20	21 1/4	23 1/4	20	21 1/4							
650	Immermere	20	21 1/4	23 1/4	20	21 1/4	672	S. L. S. F. & T. Ry.	20	21 1/4	23 1/4	20	21 1/4
651	Stephenville	20	21 1/4	23 1/4	20	21 1/4	673	Hilton	20	21 1/4	23 1/4	20	21 1/4
652	Harbin	20	21 1/4	23 1/4	20	21 1/4	674	Dorchester	20	21 1/4	23 1/4	20	21 1/4
653	Dublin	20	21 1/4	23 1/4	20	21 1/4	675	Gunter	20	21 1/4	23 1/4	20	21 1/4
654	Moffett	20	21 1/4	23 1/4	20	21 1/4	676	Celina	20	21 1/4	23 1/4	20	21 1/4
655	Proctor	20	21 1/4	23 1/4	20	21 1/4	677	Prosper	20	21 1/4	23 1/4	20	21 1/4
656	Hase	20	21 1/4	23 1/4	20	21 1/4	678	Frisco	20	21 1/4	23 1/4	20	21 1/4
657	Comanche	20	21 1/4	23 1/4	20	21 1/4	679	Hebron	20	21 1/4	23 1/4	20	21 1/4
658	Watson	20	21 1/4	23 1/4	20	21 1/4	680	Carrollton	20	21 1/4	23 1/4	20	21 1/4
659	Blanket	20	21 1/4	23 1/4	20	21 1/4	681	Vernon	20	21 1/4	23 1/4	20	21 1/4
660	Delaware	20	21 1/4	23 1/4	20	21 1/4	682	Kingda	20	21 1/4	23 1/4	20	21 1/4
	Brown wood	20	21 1/4	23 1/4	20	21 1/4		Red River	20	21 1/4	23 1/4	20	21 1/4

No Agent. Freight must be prepaid.

Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16)					STATION TO (See Item 10 for Maxima).	Index No.	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
787	Main Line—Cont'd.												
788	Krumm.												
789	Sanger.												
790	Valley View.												
791	Fair Plains.												
792	Gainesville.												
793	Windsor.												
794	Montgomery Branch.												
795	Eldridge.												
796	Lignite.												
797	Clay.												
798	Sand Pit.												
799	Allen Farm.												
800	Herrington.												
801	Terrell.												
802	Casey.												
803	Yarborough.												
804	Stonewall.												
805	Plantersville.												
806	Bobbin.												
807	Montgomery Junction.												
808	Yella.												
809	Keenan.												
810	Hones.												
811	Leonidas.												
812	Course.												
813	Lampasas Branch.												
814	Belton Junction.												
815	Belton.												
816	Lantry.												
817	Stone Siding.												
818	Wanumite.												
819	Killeen.												
820	Copperas Cove.												
821	Kempner.												
822	Ogles.												
823	Lonest.												
824	Antelope Gap.												
825	Goldthwaite.												
826	Mullen.												
827	Donahoe.												
828	Zephyr.												
829	Richter.												
830	Brownwood.												
831	Alvarado.												
832	Truslove.												
833	Venus.												
834	Wyatt.												
835	Cedar Hill.												
836	Duncanville.												
837	Hale.												
838	Reinhardt.												
839	Garland.												
840	Sachse.												
841	Wylie.												
842	Clear Lake.												
843	Copville.												
844	Armerville.												
845	Merit.												
846	Caliente.												
847	Wolf City.												
848	Ladonia.												
849	Black Quarry.												
850	Honey Grove.												
851	Pecan Gap.												
852	Ben Franklin.												
853	Rorton.												
854	Ambia.												
855	Paris.												
856	Weatherford Branch.												
857	Godley.												
858	Cresson.												
859	Parsons.												
860	Weatherford.												

From Groups 8, 12, 26 and 46, shall not exceed 15c. per 100 lbs.

From Group 13, rate 15c. per 100 pounds applies.

From Groups 4 and 13 rate 18½ cents applies.

Item 52.

HEARNE & BRAZOS VALLEY R. R.

Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16)					STATION TO (See Item 10 for Maxima).	Index No.	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
870	Glass.												
871	Westbrook.												
872	Rache.												
873	Providence.												
874	Newton.												
875	Tatsie.												
876	Nicholas.												
877	Carr.												
878	Watts.												
879	Porter.												
880	White.												
881	Wilson.												
882	Mumford.												
883	Aslin.												
884	Davis.												
885	Steele's Store.												
886	Mills.												
887	Stone City.												

No Agent. Freight must be prepaid.

From Group 17, rate 20 cents per 100 pounds applies.

Index No.	STATION TO (See Item 10 for Maxima).	From Groups (See Item 16)					STATION TO (See Item 10 for Maxima).	From Groups (See Item 16)				
		1	7	27	33	5		4	13			
1034	Pt. Worth Div.—Cont'd.	15					Pt. Worth Div.—Cont'd.					
1035	Cawson.						Maypearl.					
1036	*Royer.		15	17	15		*Griffiths.	1037				
1037	*Koppe.						*Venus.	1038				
1038	*Genery.						*Bradley.	1039	18	20	22	
1039	*Smithana.						*Lillian.	1040				
1040	*Fountain.						*Retta.	1041				
1041	*Higgs.						*Everman.	1042				
1042	*Onah.						*Mara.	1043				
1043	*Shoresides.											
1044	*Ollinda.						Henderson Branch.					
1045	*Carn.						*Norfolk.	1045				
1046	*Nicholas.						*Burns.	1046				
1047	*Tetide.						*Ralph.	1047				
1048	*Haymarket.						Henderson.	1048	17½	20	19½	
1049	*Hensen.	17½	18	20	18			1049				
1050	*Coker.						Mineola Branch.					
1051	Valley Junction.						*Whitehouse.	1050				
1052	*Adridge.						*Homer.	1051				
1053	*Goodland.						*Harvilla.	1052	16	20	18½	
1054	*Dunn's Farm.						*Tyler.	1053				
1055	*North Harlan.						*Svan.	1054				
1056	*Harvin.						*Lindale.	1055				
1057	*Barton.						*Tates.	1056	17½	20	19½	
1058	*Beekham.						*Eads.	1057				
1059	*Peterson.						*Mineola.	1058				
1060	Calvert Junction.											
1061	*Garrettsburg.						Columbia Branch.					
1062	*Black Bridge.	17½	19	21	18½		*Pierce Junction.	1062				
1063	*McLendon.						*Myrtle.	1063				
1064	*Satter.						*Almeda.	1064				
1065	*Bulfin.						*Riceon.	1065				
1066	*Oatha.						*Masterson.	1066				
1067	*Eldine.						*Arcola.	1067				
1068	*High Bank.						*Hawdon.	1068	b 12½	19	14½	
1069	*Carmack.						*Hawdon.	1069				
1070	*Clarkview.	17½	19	21	18½		*Sandy Point.	1070				
1071	*Rissel.						*Bonney.	1071				
1072	*Connally.						*Caenango.	1072				
1073	*Jones.						*Anchor.	1073				
1074	*McClanahan.						*Oyster Creek.	1074				
1075	*Otto.						*East Columbia.	1075				
1076	*Mart.											
1077	*Battle.						Georgetown Branch.	1076				
1078	*Tekla.						*Old Round Rock.	1077	18½	20	21	
1079	*Leroy.						Georgetown.	1078				
1080	*Preslope.											
1081	*Malone.	17½	20	22	18½		Madisonville Branch.	1081				
1082	*Gehring.						*Becker.	1082	15	15	17	
1083	*Irene.						*Anderson.	1083	15½	16	18	
1084	*Mertens.						*Roan's Prairie.	1084	16	17	19	
1085	*McDaniel.	18½	20	22	18½		*Hoffron.	1085	17	17½	19½	
1086	*Italy.						*Singleton.	1086				
	*Pellbranch.						*Bodias.					
							Madisonville.					

aFrom Dayton, 11c; Liberty, 12½c.; Devers, 13c. applies.
bFrom Groups 8, 12 and 26, rate 13½ applies.
cRate from Dayton 12c; Liberty, 12½c.; Devers 13c. per 100 pounds.
dPrepay not required on shipments to the Governor or State Institutions; other shipments must be prepaid.

Item 54

KANSAS CITY. MEXICO & ORIENT RY.

[illegible]

*No Agent Freight must be prepaid.

Index No.	STATION TO (See Item 10 for Maxima).	From Groups. (See Item 10).					Index No.	STATION TO (See Item 10 for Maxima).	From Groups. (See Item 10).				
		1	2	3	4	5			1	2	3	4	5
		12	20	49	33	5			12	20	49	33	5
		7	27	55	35	13			7	27	55	35	13
		8	20						8	20			
	Dallas Division—Cont'd.							San Antonio Div.—Cont'd.					
1257	*Honey Springs.....						1309	*Hunter.....					
1258	*Ball.....						1310	*Grune.....					
1259	*Red Oak.....						1311	*New Braunfels.....					
1260	*Sterrett.....						1312	*Solma.....	18½	20	22	18½	
1261	*Kipping.....	18½	20	22	18½		1313	*Corbyn.....					
1262	*Foreston.....						1314	*Landa.....					
1263	*Italy.....						1315	*Fratt.....					
1264	*Milford.....							McKinney Branch.					
1265	*Hamel Branch.....						1316	*Princeton.....					
1266	*Lakemon.....						1317	*Farmersville.....	17½	20	22	18½	
	Henrietta Division.						1318	*Floyd.....					
1267	*Woodbine.....							Shreveport Division.					
1268	*Bethard.....	18½	20	22	18½		1319	*Campbell.....					
1269	*Gainesville.....						1320	*Cumbly.....					
1270	*Lindsay.....						1321	*Brashear.....					
1271	*Myra.....						1322	*Sulphur Springs.....					
1272	*Muenster.....	18½	21½	23½	20		1323	*Como.....					
1273	*St. Jo.....						1324	*Pickton.....					
1274	*Bonita.....						1325	*Winboro.....					
1275	*Nocona.....						1326	*East Winsboro.....					
1276	*Belcher.....						1327	*Scroggins.....					
1277	*Ringgold.....						1328	*Newsome.....					
1278	*Rosson.....	20	21½	23½	20		1329	*Leesburg.....					
1279	*Haskell.....						1330	*Pittsburg.....					
1280	*Henrietta.....						1331	*Faher.....					
	Wichita Falls Ky.						1332	*Oson.....					
1281	*Edwards.....						1333	*Daingerfield.....					
1282	*Jolly.....	20	21½	23½	20		1334	*Vale.....	17½	20	22	18½	
1283	*Wichita Falls.....						1335	*Hughes.....					
	Denton Branch.						1336	*Wilson.....					
1284	*Corinth.....						1337	*Pattinall.....					
1285	*Garza.....						1338	*Avinger.....					
1286	*McGee.....						1339	*Orin.....					
1287	*Lewisville.....						1340	*Leaster.....					
1288	*Trinity Mills.....	18½	20	22	18½		1341	*Garber.....					
1289	*Carrollton.....						1342	*Hedges.....					
1290	*Farmer's Branch.....						1343	*Newline.....					
1291	*Lelok.....						1344	*Kellyville.....					
1292	*Thatcher.....						1345	*Jefferson.....					
	Belton Branch.						1346	*Sherwin.....					
1293	*Beamer.....	18½	20	22	18½		1347	*Norwood.....					
1294	*Belton.....						1348	*Karnack.....					
	San Antonio Division.						1349	*Fitzpatrick.....					
1295	*Rosanky.....						1350	*Leigh.....					
1296	*Henkens.....						1351	*Orchard Park.....					
1297	*Tomlin.....						1352	*Watson.....					
1298	*Red Rock.....							Cleburne & S. W.					
1299	*Bateman.....						1353	*Cleburne.....	18½	20	22	18½	
1300	*Mears.....						1354	*Keene.....					
1301	*Dale.....							Georgetown Branch.					
1302	*Lockhart.....	18½	20	22	18½		1355	*Weir.....					
1303	*Blanks.....						1356	*Katy Lake.....					
1304	*Clear Forks.....						1357	*Georgetown.....					
1305	*Maxwell.....						1358	*Burkland.....	18½	20	22	18½	
1306	*Reedville.....						1359	*Pflugerville.....					
1307	*Blanco.....						1360	*Deane.....					
1308	*San Marcos.....						1361	*Sprinkle.....					

*No Agent. Freight must be prepaid.

†From Group 3, 5 and 40, rate 13½¢c. applies.

‡From Groups 12, 26 and 46, rate 14¢c. applies.

§From Group 13, rate 13½¢c. applies.

Index No.	STATION TO (See item 10 for Maxima)	From Groups (See item 10)									
		1	2	3	4	5	6	13	18	17	10
		20 47	26 48	27 49				33	35		
		7 29	50	55				56	54		
		12									
Main Line—Cont'd.											
1416	*Beauregard										
1417	*Booth										
1418	*Floresville										
1419	*Labatt										
1420	*Lorraine										
1421	*Calaveras										
1422	*Frank										
1423	*Michelson										
1424	*Sapuncu										
1425	*Elmendorf										
1426	*Bergs										
1427	*Florine										
1428	*Hot Sulphur Baths										
1429	*Riverdale										
1430	*San Antonio										
1431	*Richards										
1432	*Olga										
1433	*Viva										
1434	*Aue										
1435	*Van Raub										
1436	*Braden										
1437	*Boerne										
1438	*Walfare										
1439	*Waring										
1440	*Comfort										
1441	*Moorea										
1442	*Genahl										
1443	*Parsons										
1444	*Kerrville										
Corpus Christi Branch.											
1445	*Milede										
1446	*Fetus										
1447	*Tuleita										
1448	*Normans										
1449	*Beville										
1450	*Skidmore										
1451	*Clara										
1452	*Epelote										
1453	*Sinton										
1454	*Taft										
1455	*Gregory										
1456	*Portland										
1457	*Corpus Christi										
Rockport Branch.											
1458	*McCampbell										
1459	*Ingleside										
1460	*Aransas Pass										
1461	*Rockport										
Alice Branch											
1462	*Tynan										
1463	*Mathis										
1464	*La Fruta										
1465	*Sandia										
1466	*Wades										
1467	*Reynolds										
1468	*Alfred										
1469	*Alice										
1470	*El Par										
1471	*Wadoto										
1472	*Ella										
1473	*Premont										
1474	*Palfurris										

*No Agent. Freight must be prepaid.

||From Beaumont and Orange, Texas, West Lake and Lake Charles, La., rate of 13½c. per 100 lbs. applies.

||From Morgan City, Berwick, Jeanerette and Patterson, rate of 17½c. per 100 lbs. applies.

Index No.	STATION TO (See item 10 for Maxima)	(See item 15)					Index No.	STATION TO (See item 10 for Maxima)	(See item 16)				
		1	2	3	4	5			1	2	3	4	5
1524	Algon...	12	20	33	4	5	1555	*Driscoll...	12	20	33	4	5
1525	Liverpool	14	40	33	13		1556	*Julia...	14	40	33	13	
1526	Angelen	3	20	23			1557	*Cassar...	3	20	23		
1527	Bracora	7	20	23			1558	*Kingville	7	20	23		
1528	Bay City	8	27	55			1559	*Richard	8	27	55		
1529	*Buckeye						1560	*Spohn					
1530	*Elmaton						1561	*Sarta					
1531	*Pierce Spur						1562	*Miffin					
1532	*Blossing						1563	*Turcotte					
1533	*Francias						1564	*Katherine					
1534	*Laward						1565	*Norias					
1535	*Imay						1566	*Rudolph					
1536	*Benwest						1567	*Yturria					
1537	*Kernan's Spur						1568	*Raymondville					
1538	*Lilleretta						1569	*Lyford					
1539	*Placido						1570	*Stillman					
1540	*Taylor						1571	*Combee					
1541	*Marina						1572	*Haringen					
1542	*Greta						1573	*Tocano					
1543	*Refugio						1574	*Lonsboro					
1544	*Lara						1575	*Donna					
1545	*Church						1576	*Ebenezer					
1546	*Creswell						1577	*MacAllen					
1547	*Evelder						1578	*Mamie					
1548	*Stanton						1579	*Loaner					
1549	*Corpus Christi						1580	*Fordyce					
1550	*Donlin						1581	*Beasie					
1551	*Aspasia						1582	*Barreda					
1552	*Calvin						1583	*Olmite					
1553	*Rogers						1584	*Brownsville					
1554	*Hoketown												

† From Group 4 rate 20¢ applies.

ST. LOUIS SOUTHWESTERN RY. OF TEXAS.

Item 60.

Index No.	STATION TO (See item 10 for Maxima)	From Groups (See item 16)					Index No.	STATION TO (See item 10 for Maxima)	From Groups (See item 16)				
		1	2	3	4	5			1	2	3	4	5
1585	Texarkana	1	8	27			1611	*Pritchett	1	8	27		
1586	*Eylau	2	12	20			1612	*Pinnacle	2	12	20		
1587	*Rowan	3	20	55			1613	*Sand Pit	3	20	55		
1588	*Reiwater	7	26				1614	*Big Sandy	7	26			
1589	*Chem						1615	*Winona					
1590	*Maud						1616	*Holly					
1591	*Corley						1617	*Tyler					
1592	*Fouke						1618	*Ballwood					
1593	*Woodard						1619	*Greenbrier					
1594	*Gimna						1620	*Gandler					
1595	*Metcalfe						1621	*Brownboro					
1596	*Bassett						1622	*Murchison					
1597	*Finley						1623	*Ash					
1598	*Naples						1624	*Dauphin					
1599	*Omaha						1625	*Malakoff					
1600	*Cookville						1626	*Trinidad					
1601	*Mt. Pleasant						1627	*Legg					
1602	*Mt. Pleasant Junction						1628	*Goodnight					
1603	*Big Cypress						1629	*Kerns					
1604	*Pittsburg						1630	*Powell					
1605	*Pine						1631	*Stribling					
1606	*Smiths						1632	*Corbet					
1607	*Bettie						1633	*Bain					
1608	*Delross						1634	*Jester					
1609	*Gilmer						1635	*Furdon					
1610	*Runaway						1636	*Dwain					

* No agent. Freight must be prepaid.

1740 1741 1742 1743 1744 1745 1746 1747 1748 1749 1750 1751 1752 1753 1754 1755 1756 1757 1758 1759 1760 1761 1762 1763 1764 1765 1766 1767 1768 1769 1770 1771 1772 1773 1774 1775 1776 1777 1778 1779 1780 1781 1782 1783 1784 1785 1786 1787 1788 1789 1790 1791 1792 1793 1794

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1740 Higgins		23 1/4	28	36	23 1/4		1748	White Deer	22 1/2	28	36	22 1/2	
1741 Coburn							1749	Parhandle					
1742 Glaser							1750	Lee					
1743 Canadian							1751	Yernall					
1744 Mandota							1752	Washburn					
1745 Miami							1753	Wulman					
1746 Codman		22 1/2	28	36	22 1/2		1754	Anarillo	21 1/4				21 1/4
1747 Pampa													

Item 63.

TEXAS-MEXICAN RAILWAY.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1755 Rogers		20	25	27	20		1764	Realitos	21 1/4	27	21 1/4		
1756 Bobtown							1765	Hobbsville					
1757 Banquets							1766	Torresillas					
1758 Agua Dulce							1767	Brunville					
1759 San Diego							1768	Ochoa					
1760 Mesquite							1769	Aguilares					
1761 Duval		22 1/2	25	27	22 1/2		1770	Pescadito					
1762 Baevidos							1771	Laredo					
1763 Sweden													

† From Groups 4 and 13 rate 21 1/4 cents applies.

Item 64.

TEXAS SHORT LINE.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1772 Grand Saline		17 1/2	20	22	17 1/2		1774	Grit	17 1/2	20	22	17 1/2	
1773 Hoyt													

Item 65.

TEXAS & PACIFIC RAILWAY.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1776 Sulphur		17 1/2	20	22	17 1/2		1795	Longview Junction	17 1/2	20	22	17 1/2	
1777 Alamo							1796	Willow Springs					
1778 Springdale							1797	Castleberry					
1779 Queen City							1798	Ruckers					
1780 Atlanta							1799	Gladeswater					
1781 Gallows							1800	Wilkins					
1782 Bivins							1801	Neels					
1783 Wayne							1802	Big Sandy					
1784 Kildare							1803	Ferguson					
1785 Lodi							1804	Farmers					
1786 Stalls							1805	Bryans					
1787 Furnace							1806	Hawkins					
1788 Jefferson							1807	Lake Fork					
1789 Woodlawn							1808	Mincola					
1790 Marshall							1809	Macks					
1791 Abbeville							1810	Silver Lake					
1792 Deckers							1811	Grand Saline					
1793 Hallville							1812	Edgewood					
1794 Lansing							1813	Will Point					

* No agent. Freight must be prepaid.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1863	Ennis	117½	117½	117½	117½	117½	1971	Healy	117½	117½	117½	117½	117½
1864	Newcom	117½	117½	117½	117½	117½	1972	Fisher	117½	117½	117½	117½	117½
1865	Beale	117½	117½	117½	117½	117½	1973	Roberts	117½	117½	117½	117½	117½
1866	Crap	117½	117½	117½	117½	117½	1974	Quinn	117½	117½	117½	117½	117½
1867	McKay	117½	117½	117½	117½	117½	1975	Cash	117½	117½	117½	117½	117½
1868	Alford	117½	117½	117½	117½	117½	1976	Harlow	117½	117½	117½	117½	117½
1869	Sealey	117½	117½	117½	117½	117½	1977	Greenville	117½	117½	117½	117½	117½
1870	Sand Lake	117½	117½	117½	117½	117½	1978	Neyland	117½	117½	117½	117½	117½
1871	Trinity	117½	117½	117½	117½	117½	1979	Commerce	117½	117½	117½	117½	117½
1872	Rosier	117½	117½	117½	117½	117½	1980	Horton	117½	117½	117½	117½	117½
1873	Parvin Park	117½	117½	117½	117½	117½	1981	Rondike	117½	117½	117½	117½	117½
1874	Scurry	117½	117½	117½	117½	117½	1982	Cooper	117½	117½	117½	117½	117½
1875	Leith	117½	117½	117½	117½	117½	1983	Enloe	117½	117½	117½	117½	117½
1876	Cartwright	117½	117½	117½	117½	117½	1984	Howland	117½	117½	117½	117½	117½
1877	Terrell	117½	117½	117½	117½	117½	1985	Atlas	117½	117½	117½	117½	117½
1878	Edna	117½	117½	117½	117½	117½	1986	Culbertson	117½	117½	117½	117½	117½
1879	Blin	117½	117½	117½	117½	117½	1987	Paris	117½	117½	117½	117½	117½
1880	Tona	117½	117½	117½	117½	117½							

† From Poyner 16 cents per 100 pounds.

‡ From Poyner 15½ cents per 100 pounds.

• From Poyner 14½ cents; Frankston 16 cents per 100 pounds.

• From Poyner and Frankston 15½ cents per 100 pounds.

• From Poyner 15 cents; Frankston 15½ cents per 100 pounds.

• From Poyner 15 cents; Frankston 15½ cents; Jacksonville 16 cents per 100 pounds.

• From Jacksonville to Frankston, inclusive, not to exceed 18½¢; from points between Jacksonville and Nacogdoches not to exceed 16¢ per 100 pounds.

a Rate 18½¢ cents applies on Pine Lumber, etc., from Alexandria, La., only.

c From Groups 4 and 13 rate 18½¢ cents applies.

Item 67.

TEXAS CENTRAL R. R.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)					Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				
		1	2	3	4	5			1	2	3	4	5
1888	Rotan	18½	18½	18½	18½	18½	2003	Magnum	18½	18½	18½	18½	18½
1889	Aquilla	18½	18½	18½	18½	18½	2004	Westland	18½	18½	18½	18½	18½
1890	Whitney	18½	18½	18½	18½	18½	2005	Cisco	18½	18½	18½	18½	18½
1891	Fowler	18½	18½	18½	18½	18½	2006	Elco	18½	18½	18½	18½	18½
1892	Morgan	18½	18½	18½	18½	18½	2007	Moran	18½	18½	18½	18½	18½
1893	Walnut Springs	18½	18½	18½	18½	18½	2008	Sedgewick	18½	18½	18½	18½	18½
1894	Iredell	18½	18½	18½	18½	18½	2009	Edilia	18½	18½	18½	18½	18½
1895	Elco	18½	18½	18½	18½	18½	2010	Albany	18½	18½	18½	18½	18½
1896	Cairrette	18½	18½	18½	18½	18½	2011	Coghlin	18½	18½	18½	18½	18½
1897	Alexander	18½	18½	18½	18½	18½	2012	Reynolds	18½	18½	18½	18½	18½
1898	Dublin	18½	18½	18½	18½	18½	2013	Matthews	18½	18½	18½	18½	18½
1899	Consyn	18½	18½	18½	18½	18½	2014	Clear Fork	18½	18½	18½	18½	18½
200	DeLeon	18½	18½	18½	18½	18½	2015	Leiders	18½	18½	18½	18½	18½
2001	Gorman	18½	18½	18½	18½	18½	2016	Avoca	18½	18½	18½	18½	18½
2002	Carbon	18½	18½	18½	18½	18½	2017	Stamford	18½	18½	18½	18½	18½

Item 68.

TEXAS CITY TERMINAL RY.

Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)				Index No.	STATION TO (See Item 10 for Maxima)	From Groups (See Item 16)			
		1	2	3	4			1	2	3	4
2018	Texas City	7	8½	12½	7	2018	Texas City	13½	11½	10	8½

* No agent. Freight must be prepaid.

* This column. Freight must be prepaid.

Item No.	COMMODITY	FROM	TO	RATE
73	Copperas Bush, carloads.	New Augusta. (Via Mo. Pac. T. & P., I. & G. N. and Houston.)	Harlem.	27
74	Copperas Bush, carloads, minimum weight, 30,000 pounds.	Hayti. Caruthersville.	McNall. (Via Denison and H. & T. C.)	22½
75	Logs, Walnut, carloads, minimum weight, 40,000 pounds.	Truman. Stations on Kansas City Southern Railway, Grandview to Gentry, Ark., inclusive.	Galveston. (For export.)	25 Includes terminal charges, except wharfage at Galveston.
76	Lumber and articles taking same rate, carloads.	Woodworth & Louisiana Central Railroad.	Algon.	11¼
77	Lumber, Oak, carloads.	Sedgwick. Route via Sherman, H. & T. C. and Houston.	Beaumont. Gladys.	20 22½
78	Lumber, common, and articles taking same rates, carloads.	Little Rock. (Via Frisco)	Corsicana.	20
79	Lumber, etc., carloads.	T. & N. O. R. R. Dallas-Babbine Div., Rockland and South.	Bollivar.	46
80	Lumber, Hardwood (except woods of value), carloads, minimum weight 30,000 pounds.	Halley. Benton.	Eagle Pass. (Via San Antonio)	32
81	Lumber, Cottonwood, carloads.	Blissville. Arthur.	Fort Worth. Dallas.	12½
82	Lumber, Cottonwood, carloads.	Shreveport. T. & N. O. R. R., via: Beaumont. Orange.	Ft. Worth. Tex. Tex.	17½ 6
83	Lumber, etc., carloads, minimum weight, 40,000 pounds.	Other Main Line Points, Dallas-Babbine Division, Rockland and south. Louisiana Western R. R., via: Lake Charles. West Lake. Vinton. Edgerly.	Galveston. (For export other than Mexico.) (See Item 130 for export to Mexico.)	7 6
84	Lumber, Ash, Cottonwood, Gum, Cypress, Oak, Pecan, Walnut and Hickory, carloads.	H. E. & W. T. R.'s points. Liberty.	Galveston. Tex.	7 6
85	Lumber, etc., carloads, minimum weight 40,000 pounds.	Verde.	Galveston. (For export)	15
86	Lumber, etc., carloads, minimum weight 40,000 pounds.	St. L. W. & G. mills.	Galveston (for export other than Mexico).	9
87	Lumber, etc., carloads.	Bossier City.	Galveston (for export to Mexico).	13¼
88	Lumber, Hard Wood, carloads.	St. L. & S. F. R. R. mills. (Via H. E. & W. T.) G. C. & S. F. Ry. East of Somerville to Beaumont, inclusive. North of Silsbee to San Augustine, incl. (Via Cleveland)	Galveston (does not include terminal charges.) Houston. Tex. Tex.	12 20
89	Lumber and articles taking same rates, carloads.	North of San Augustine to Duff, incl. (Via Cleveland)	Houston.	8¾
90	Lumber, Ash, carloads, minimum weight 24,000 pounds.	North of Duff to Center, incl. (Via Cleveland)	Houston.	10
91	Lumber, Oak, and articles taking same rates, carloads.	Felder.	Houston. Huntsville.	11¼ 15
92	Lumber, etc., carloads, minimum weight 40,000 pounds.	Benton. (Via Frisco) Orange.	Naacodoches. Port Arthur. (For export to other than Mexican points. (Via West Port Arthur.)	27 4

* Rate to intermediate points not to be affected.

Item No.	COMMODITY	FROM	TO	RATES
106	Lumber, Poplar, carloads.....	St. L. & S. F. Ry. St. L. S. W. Ry.	Sunset Route and H. & T. C. Stations taking Texas common point rates.	Class D differential to apply in making rates to points taking higher than common point rates.
107	Lumber, carloads.....	Algiers. Gretia.	Texas common points.....	22 plus \$10 per carload
108	Meat Skewers, carloads.....	Arkansas points named in Group 41 and 44.	G. H. & S. A. Ry. points H. & T. C. R. R. points	5 cents per 100 pounds higher than lumber rates
109	Mattress and Cot Frame Materials (wood) in white, completely K. D., carloads.	All points named in Groups 41 and 44.	G. H. & S. A. Ry. points H. & T. C. R. R. points	5 cents per 100 pounds higher than lumber rates.
110	Material—Box, carloads, viz: Box Lumber or Shooks, strips for box ends elevated together, Lumber cut to length for boxes not further manufactured. Minimum weight 30,000 pounds. Vegetable packages made from scarfed box material. Scarfed Berry Boxes, K. D., in bundles N. O. S., Melon Crate Material, K. D., in bundles, Grape Packages, nested, handles and covers in bundles. Four and six-package crates: Fruit and Vegetable Packages, nested, handles and covers in bundles; Fruit and Vegetable Crate material, in bundles, four and six-package crates.	St. L. & S. F. R. R. Stations in Arkansas J. L. C. & E. R. R. stations..... Shreveport..... Booster City..... La. La.	Texas common points..... H. & T. C. R. R. points.....	Class D differential to apply in making rates to points taking higher than common point rates. 7 cents higher than Lumber rates, with maximum of 25c per 100 lbs.
111	Material—Barrels, Tierces, Casks, Kegs or Drums, empty, minimum weight 30,000 pounds.	St. L. & S. F. points named in Group 41.	Texas points.....	5c per 100 lbs. higher than common lumber rates.
112	Material—Wagon Material in the rough or partly or wholly finished, not ironed; hubs, spokes, felloes, rims, axles (wood); plowbeams (wood), wagon wood or parts, bolsters, coupling poles, reaches, tongue sand boards, bounds (sawed or bent), oak plank, ash plank, pine bottoms for wagons, wagon and buggy gears, poles (in the white) shafts, pole circles, shaft bars, single-trees (wood), double-trees (wood), neck yokes (wood), staves, lead bars, bows, wood gearing, parts, sawed gearing, wood pieces, hickory plank, poplar plank, plow handles (not finished) wood brake bars, straight wood car loads, minimum weight 30,000 pounds, except where marked capacity of car is less, in which case marked capacity will govern.	Westbank..... Tex.	T. & N. O. R. R. points..... G. H. & S. A. Ry. points..... H. & T. C. R. R. points..... H. E. & W. T. Ry.....	15c higher than pine lumber, provided that class A rates shall be observed as maxima, and current lumber rates or rates named in tariff No. 50 series, shall apply when applicable.
113	Material—Wagon Wood, Plow Beams and Handles, Bent Felloes, in the rough, sawed to dimensions (not further finished), straight or mixed carloads, minimum weight 30,000 pounds, except where marked capacity of car is less, in which case marked capacity of car will govern.	Westbank..... Tex.	T. & N. O. R. R. points..... G. H. & S. A. Ry. points..... H. & T. C. R. R. points..... H. E. & W. T. Ry.....	10c higher than pine lumber, provided that class A rates shall be observed as maxima, and current lumber rates or rates named in tariff No. 50 series shall apply when applicable.

Item No.	COMMODITY	FROM	TO	WEIGHT DISTANCE IN	Rate
130	Lumber and articles taking same rates, carloads, minimum wt. 40,000 pounds.	T. & N. O. R. R. La West. R. R. M. L. & T. R. R. H. E. & W. T. Ry. H. & S. R. R.	Galveston.....Tex. For export to Mexico. Sabine.....Tex. For export to Mexico. Texas City.....Tex. For export to Mexico. Port Arthur.....Tex. For export to Mexico, using West Port Arthur mileage.	20 miles and less..... Over 20 to 40 miles..... 40 to 55 "..... 55 to 157 "..... 157 to 210 "..... 210 to 350 ".....	6¼ 7½ 8 8¼ 13¼ 16

Item 131.

KANSAS CITY SOUTHERN RY.

FROM	TO	Rates in Cents per 100 Pounds.	
		Lumber and Logs (except Walnut) C. L. Minimum Weight 40,000 Pounds	Staves and Headings, C. L. Minimum Weight 40,000 Pounds
Gilman Springs, Ark. to Sand Siding, I. T., inclusive. Ft. Smith, Ark., to Aron, Ark., inclusive. DeQueen to Carr and Kingsworthy Spur, Ark., inclus. Wilton, Ark., to Whately, Texas, inclusive. Texarkana, Texas, to Rodessa, La., inclusive. Myrtle to Blanchard, La., inclusive. Shreveport to Loring, La., inclusive. Ray to Coopers, La., inclusive. Bickering to Waverly, La., inclusive. DeQuincy to Lake Charles, La., and Port Arthur, Texas, inclusive.	Galveston.....Tex. (For export)	20 18 17 15 15¼ 15 14 13 12 10	22 20 19 17 17½ 17 16 15 14 13

† Rates on Walnut Lumber and Logs, carloads, will be 3 cents per 100 pounds higher than Lumber rates named in this item.
Rates named in this item to Galveston, Texas, will include switching and truckage charges, but not unloading or wharfe charges.

Item No.	COMMODITY	FROM	TO	RATE
173 amends 145	Effective June 15, 1904. Bridge Timbers, Cross Timbers and Telegraph Poles, car- loads.	T. & N. O. R. R. and H. E. & W. I. Ry.	Victoria.....Tex. Account Texas Rail- road Co.	134
174 amends 80	Lumber, Hardwood, (except woods of value), carloads.	Holmes.....Ark. Halley.....Ark. Benton.....Ark. Pittsboro.....Ark. Beaumont.....Tex.	Eagle Pass.....Tex. (Via San Antonio)	132
175 amends 133	Lumber and articles taking same rates, carloads.	Stations, Rockland and south thereof, also points west of Beaumont, except Houston. Stations north of Rockland to Nacogdoches, inclusive.	Galveston.....Tex.	1144
176 amends 95	Lumber, etc., carloads.	Alexandria.....La.		1164
177 amends 176	Lumber, etc., carloads.	N. & S. E. Ry.	Houston.....Tex.	84
178 amends 95	Lumber, Hardwood, carloads, minimum weight 40,000 lbs.	McDonald, La., and intermediate M. L. & T. and L. W. points. St. L. W. & G. mills.	Houston.....Tex. (For Man'g purposes) Fort Arthur.....Tex. (Export to other than Mexican points.)	84
179 amends 95	Lumber, etc., carloads, mini- mum weight 40,000 lbs.	Alexandria, La., via M. L. & T.	Port Arthur.....Tex. Sabine.....Tex. (For export other than Mexico)	7
180 amends 102	Lumber, etc., carloads.	O. & N. W. Ry.	Port Arthur.....Tex. Sabine.....Tex. (For Export)	6
181 amends 101	Lumber and articles taking same rates, carloads, mini- mum weight 40,000 lbs.	Orange.....Tex. Beaumont.....Tex. T. & N. O. stations, Rockland and south, also west of Beaumont, except Houston. T. & N. O. stations north of Rock- land to Nacogdoches, incl. K. C. S. Ry. points.	Sabine Pass.....Tex. Sabine.....Tex. Fort Arthur.....Tex. Export other than Mexico	+5 +5 +6 +7 1/2
183 amends 101	Effective August 1, 1904. Lumber, etc., carloads.	G. O. & S. F. Ry. via: Rogan and South..... North of Rogan to San Augus- tine, inclusive. North of San Augustine to Duff, inclusive. North of Duff..... T. & P. S. Ry. points, vis: Beaumont to Sabine River, inclusive. Lake Charles.....La. (Originating St. L. W. & G. mills)	Sabine.....Tex. (For Export, etc.)	+6 +7 1/2 +9 +10 1/2
184 amends 90	Lumber, etc., carloads.			

* Rate applies via M. L. & T., L. & W. and T. & N. O., but does not affect rates to and from intermediate points.

† On shipments destined for Galveston for local delivery and consumption regular tariff rates will apply, but if switched to docks, wharves or slips for U. S. Coastwise movement beyond the State of Texas, above proportional rates will apply.

* Shipments destined either port for local delivery and consumption regular tariff rate will apply; but if switched to docks, wharves or slips for export other than Mexico or United States coastwise, moving beyond the State of Texas, above proportional rates will apply.

Item 186.

MINIMUM WEIGHT.

Minimum weight of 40,000 pounds per car when car used is of greater capacity than 40,000 pounds; minimum weight of 35,000 pounds per car when car used is 40,000 pounds capacity or less, but in no case shall the minimum exceed the capacity of the car. When car is loaded to full visible capacity actual weight will apply, subject to a minimum of 35,000 pounds.

(Authority: Amendment 1 Missouri Pacific L. C. C. 9190; G. F. O. 13460.)



Office of Railroad Commission of Texas.

Special Authority.

T. & N. O. R. R. Application No. 105.

Corrected Authority No. 76.

AUSTIN, TEXAS, April 26, 1902.

In approval of Application number 105, of the Texas & New Orleans Railroad Company, authority is hereby granted for the adoption of the following rates, in cents per 100 pounds to apply on pine lumber and articles taking pine lumber rates, between points on the Texas & New Orleans Railroad, Stilson and East.

Distance, Miles.	Rates.
10 and less	3.5
15 and over 10.....	4.
30 and over 15.....	4.5
51 and over 30.....	5.
74 and over 51.....	6.
101 and over 74.....	7.5
180 and over 101.....	8.

Exception: The following rates shall apply to Sabine and Sabine Pass:

From Beaumont	2.5
" Orange	3.
" Stations North of Beaumont to Rockland inclusive	3.5
" Stations West of Beaumont except Houston	4.
" Stations North of Rockland to Nacogdoches, inclusive	6.

Effective May 1, 1902.

[SEAL.]

L. J. STOREY,
ALLISON MAYFIELD,
Commissioners.

Attest:

E. R. McLEAN, *Secretary.*

I, E. R. McLean, Secretary of the Railroad Commission of Texas do hereby certify that the above and foregoing Special Authority No. 76, dated Austin, Texas, April 26th, A. D. 1902, is a true copy of said Special Authority as the same appears of record in the office of said Commission in Record Book No. 5 on page 645 to 646 of said date, which authority is still in force. To certify which I herunto set my hand and attest the same

under seal of said Commission at Austin, Texas on this the 5th day of October, A. D. 1907.

[SEAL.]

E. R. McLEAN, *Secretary.*

Fee at 15 cts. per 100 words..... 12 cts.
Certificate 50

62 cts.

Office of Railroad Commission of Texas.

Circular No. 1169.

Rates on Lumber from Milling Points on the Southern Division of the Texarkana & Fort Smith Railway.

General Notice, Circular No. 1160. Hearing July 21, 1900.

AUSTIN, TEXAS, *July 23, 1900.*

It is hereby ordered that the following rates be adopted for the transportation of lumber, and articles taking lumber rates, in car loads, minimum weight 24,000 pounds per car, from points on the Texarkana & Fort Smith Railway, north of Beaumont to the Sabine River, to points specified below:

Rates.

To Beaumont, Port Arthur, Sabine Pass, four (4) cents per 100 pounds.

To stations south of Houston on the Gulf, Colorado & Santa Fe Railway, the Galveston, Houston & Henderson Railroad, and the Galveston, Houston & Northern Railway, except Galveston, eight and three-fourth (8¾) cents per 100 pounds.

To all stations on the Missouri, Kansas & Texas Railway of Texas (except Trinity & Sabine branch) same rates as apply from Beaumont to such stations.

638 This order shall take effect August 13, 1900.

JOHN H. REAGAN, *Chairman,*
ALLISON MAYFIELD,
Commissioners.

Attest:

E. R. McLEAN, *Secretary.*

I hereby certify that the above is a true and correct copy of Circular No. 1169, this day adopted by the Railroad Commission of Texas.

Given under my hand and the seal of the Railroad Commission of Texas, at the City of Austin, this the 23rd day of July, 1900.

[SEAL.]

E. R. McLEAN, *Secretary.*

Telegram.

Port Arthur Route.

Sent to 6	Receiver. _____	Sender _____	Time Sent _____
--------------	--------------------	-----------------	--------------------

Received From	Sender 11BJ	Receiver SU ON	Time Received 6.21 P. M. Time filed 1.31 M. Filed 6.10 P. M.
------------------	----------------	-------------------	---

HOUSTON, 9/19/06.

To R. R. Mitchell, Texarkana:

Wire quick if you have issued any through rates on lumber Ruliff to Sabine For export file CWG-19.

T. G. BEARD.

Received
Texarkana & Ft. Smith Ry.
Sept. 20, 1906,
General Freight Department,
Texarkana, Texas.

This blank to be used for telegrams only.

Telegram.

Port Arthur Route.

Sent to _____	Receiver _____	Sender _____	Time Sent _____
------------------	-------------------	-----------------	--------------------

Received _____	Sender _____	Receiver _____	Time Received _____
			Time filed — M.

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TEXARKANA, TEXAS, 9/20/06.

From,

To T. G. Beard, Houston, Texas, via Beaumont:

B—Your wire 19th file CWG-19. We publish no rate on lumber from Ruliff to Sabine when for export.

F. R. MITCHELL.

D 5, G. R. H.

This blank to be used for telegrams only.

2-21-06-10 M.
(Local.)

Form 1599.

In reply please refer to A-1251.

Texas & New Orleans Railroad Company.

Freight Traffic Department

T. G. Beard, General Freight Agent.

HOUSTON, TEXAS, Sept. 26, 1906.

Mr. R. R. Mitchell, G. F. A., T. & F. S. Ry., Texarkana, Texas.

DEAR SIR: Will you kindly advise me what rate to apply on lumber from Ruliff destined to Sabine for export, as 4 cents per hundred pounds will not apply when for export. If no through rate please advise what your rate is to Beaumont on shipments destined to Sabine for export.

Yours truly,

T. G. BEARD, G. F. A.
A.

P. A. A.

Received

Texarkana & Ft. Smith Ry.

Sep. 29, 1906,

General Freight Department,
Texarkana, Texas.

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OCTOBER 2ND, 1906.

Mr. T. G. Beard, G. F. A. T. & N. O. R. R., Houston, Texas.

DEAR SIR: Your file A-1251, September 26th.

We publish no export rates on lumber from Ruliff to Sabine. If any shipments are offered or any business has moved we will require our Interstate local of 10 cents per 100 pounds from Ruliff to Beaumont.

Yours truly,

G. F. A.

FAA-JFH

W. A. Powell & Co. in Acc. Sabine Tram Co.

Covering 38 Cars from Deweyville, Tx., to Sabine, Tx.

Date	Car No.	Cars	Gross amt.	Frt. pd.	No. & date our SD covering shipments as noted.
Sept. 7.	TFS	21537	228.99	80.30	2456 9/13
"	KCS	21139	282.60	84.35	2478 10/18
" 8.	"	21629	336.54	100.38	2456 9/13
" 9.	"	25187	319.34	88.20	2456 9/13
" 11.	"	24751	319.43	93.00	2456 9/13
" 15.	SP	59100	332.65	93.15	2474 10/6
"	TC	3011	162.58	60.00	2474 10/6
Oct. 3.	GH&SA	1140	165.72	60.00	2474 10/6
"	KCS	33197	438.75	126.45	2474 10/6
" 4.	"	26008	418.35	116.10	2474 10/6
"	TNO	3174	288.66	83.40	2474 10/6
" 5.	KCS	21494	324.22	93.15	2478 10/18
" 6.	"	24517	317.43	93.75	2478 10/18
" 8.	"	25288	332.75	94.95	2478 10/18
" 11.	GH&SA	40259	412.00	117.45	2478 10/18
911					
Oct. 11.	MLT	21117	472.48	136.80	2478 10/18
" 13.	FSW	5447	410.64	117.60	2478 10/18
"	LW	15704	276.43	78.60	2478 10/18
" 17.	SP	78809	427.10	123.60	2478 10/18
"	LW	5826	314.24	91.80	2478 10/18
" 18.	HTC	136	296.10	186.15	2481 10/20
"	"	51	333.81		2481 10/20
" 19.	GH&SA	4198	270.73	179.25	2483 10/25
"	L&N	5327	331.29		2483 10/25
" 20.	MLT	21226	449.61	140.25	2483 10/25
" 22.	FSW	5667	358.88	180.90	2283 10/25
" 23.	IC	97758	414.95	122.85	2483 10/25
" 24.	MLT	5105	303.80	211.65	2488 10/31
"	TNO	23361	400.09	.....	2488 10/31
" 26.	H E WT	3582	245.25	72.00	2483 10/31
" 31.	HTC	403	235.75	70.65	2502 11/3
Nov. 1.	LW	20032	332.52	98.70	2503 11/5
Oct. 6.	SP	55507	268.32	72.90	2508 11/24

\$10,816.85 \$3,156.03

Frt. Refunded W. A. Powell & Co. as follows:

Nov. 7.	Our SD	6540	125.16
" 15.	"	6600	2,300.00
Dec. 17.	"	6691	730.87

\$3,156.03

11-05-100 Bks.

Form 1711.

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..... Station, Agent.

Cr.

Paid to — for —.

1906. Date.	Page.			
9-19	18	1 Car.	35.28	
9-24	22	2 "	25.74	
642		D. 7, G. R. H.		
			40.14	
9-29	27	4 Cars.	24.00	
			37.20	
			37.28	
			24.00	
10-17	47	1 "	94.95	
10-18	48 & 49	7 "	60.00	
			126.45	
			71.90	
			83.40	
			116.10	
			93.15	
			93.75	
			52.92	✓ C/S ✓
			36.00	✓
			60.24	✓
			38.61	✓
			55.89	✓
			36.00	✓
			55.80	✓
10-31	60	9 "	123.60	
			140.25	
		Twin Load	179.25	
		Twin Load	186.15	
			117.45	
			136.80	
			122.85	
11-12	73	8 "	117.60	
			78.60	
			108.90	
			91.80	
		Twin Load	211.65	
			72.00	
			70.85	
11-17	79	1 "	98.70	
		83		
			\$3,155.03	

5 payments made @ 15¢ rate 10/17-18-31 and 11/12 & 17.

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INTERSTATE COMMERCE COMMISSION,
OFFICE OF THE SECRETARY, WASHINGTON.

I, Edward A. Moseley, Secretary of the Interstate Commerce Commission, do hereby certify that the documents hereto attached, to-wit, The Kansas City Southern Railway Co. and Texarkana & Fort Smith Railway Co. Joint Distance Tariff Port Arthur Route No. 822-A, T. & Ft. S. No. 180-B (I. C. C. No. 841), and Amendments Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, are true copies of schedules filed with the said Interstate Commerce Commission by E. E. Smythe, G. F. A., The Kansas City Southern Railway Co., Kansas City, Mo., on dates specified below:

Filed with said
Commission.

The Kansas City Southern Railway Co. Joint Distance		
Tariff Port Arthur Route No. 822-A (I. C. C. 841),		
Texarkana & Ft. Smith No. 180-B.....		May 21, 1900.
Amendment No. 1.....		Sept. 29, 1900.
" 2.....		Feb. 23, 1901.
" 3.....		Mar. 1, 1901.
" 4.....		Mar. 22, 1901.
" 5.....		Oct. 17, 1901.
" 6.....		Mar. 21, 1902.
" 7.....		July 19, 1902.
" 8.....		July 31, 1902.
" 9.....		May 7, 1903.
" 10.....		June 6, 1903.
" 11.....		Sept. 3, 1903.
" 12.....		Jan. 14, 1904.
" 13.....		May 14, 1904.
" 14.....		Dec. 3, 1904.
" 15.....		July 27, 1905.
" 16.....		Jan. 25, 1906.
" 17.....		Jan. 29, 1906.
" 17.....		Mar. 11, 1906.
" 18.....		June 11, 1906.
" 19.....		June 28, 1906.

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Amendment No. 20.....	July 9, 1906.
" 21.....	Sept. 16, 1907.

and that said schedules have been continuously on file in the office of said Commission to date hereof.

In Witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 9th day of Oct. 1907.

[SEAL.]

E. A. MOSELEY,

Secretary Interstate Commerce Commission.

Defendants' Exhibit No. 8.

I. C. C. No. 841 Cancels I. C. C. No. 472, Sept. 26, '07.

141,905.

Port Arthur Route.

Receipt No. 9195.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co., in Connection with Texas, Arkansas & Louisiana
Railway Co.

T. & Ft. S. 180-B (Cancels 180-A).

Port Arthur Route No. 822-A (Cancels No. 822).

Joint Distance Tariff Applying Between All Points on The Kansas
City Southern Ry. Co. and Texarkana & Fort Smith Ry. Co. South
of Noel, Mo. (Except Texas Local Traffic); Also Between Any
Point North of and Any Point South of Noel, Mo. (Except Be-
tween Points within the State of Arkansas).

Subject to Western Classification with exceptions applicable to Ar-
kansas (as per Rate Circular No. 14-B, Arkansas Classification Ex-
ceptions I. C. C. No. 1).

Issued May 17, 1900; Effective May 17, 1900.

Chas. E. Perkins,

A. G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

B. F. Ellington,

G. M., T. A. & L. Ry.,
Atlanta, Tex.

M. L. Scovell,

G. F. A., & Ft. S. Ry. Co.,
A. G. F. A., The K. C. So. Ry. Co.,
Texarkana, Tex.

J. A. Hanley,

F. T. M., The K. C. So. Ry. Co.,
Kansas City, Mo.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 3150.

Mailed to I. S. C. C. May 17, 1900.

Reissue of rates in effect.

T.—H. Ptg. Co. 2500.

Joint Distance Tariff, Port Arthur Route, No. 822-A.

Rates in cents per one hundred pounds.

Distances.	Merchandise, carloads.										Lumber. See note 3.	Agricultural imple- ments, binders, twine, wagons, stair or mixed C. L.; furniture, st- C. L., min. wt 20,000 lbs.
	1st Class.	2nd Class.	3rd Class.	4th Class.	5th Class.	Class A.	Class B.	Class C.	Class D.	Class E.		
5 miles and under	15	13	11	10	9	9	8	7½	6	5	5	7
10 " " over..	20	19	18	17	14	14	11	9	8	7	6	10
16 " " " "	10	23	20	19	18	15	12	11	9	8	7	11
20 " " " "	15	27	22	20	19	16	13	12	10	8	8	12
25 " " " "	20	30	25	20	17	17	15	13	11	9	9	12

Joint Distance Tariff, Port Arthur Route No. 822—Continued.

Rates in cents per one hundred pounds

Distances.	Merchandise.										Lumber. See note 8.	Agricultural imple- ments, blades, twines, wagons, stir's or mowed C. L.; furniture, etc. C. L., min. 1/2 20,000 lbs.
	1st class.	2nd class.	3rd class.	4th class.	5th class.	Class A.	Class B.	Class C.	Class D.	Class E.		
30	25	28	25	21	18	18	17	14	12	9	10	13
35	"	30	27	22	20	20	19	15	13	10	10	14
40	"	35	29	24	22	22	21	16	14	10	10	15
45	"	40	31	26	24	24	23	17	15	11	11	17
50	"	45	33	28	26	26	25	18	16	11	11	18
55	"	50	38	30	28	28	26	19	17	12	11	19
60	"	55	40	32	30	30	27	20	18	12	12	21
65	"	60	42	34	31	31	28	21	18	13	12	22
70	"	65	44	36	32	32	29	22	19	13	12	23
75	"	70	46	37	33	33	30	23	19	14	13	23
80 miles and over..	75	48	45	38	34	34	31	24	20	14	13	24
85	"	50	46	39	35	35	32	25	20	15	13	25
90	"	52	47	41	36	37	33	26	21	15	14	26
95	"	54	48	42	37	38	34	27	21	16	14	27
100	"	56	49	44	38	39	35	28	22	16	15	28

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110	"	"	100	68	58	53	52	49	42	37	30	23	17	15	29
120	"	"	110	72	62	60	56	42	43	39	31	25	18	15	30
130	"	"	120	76	65	62	57	43	44	40	33	25	19	16	31
140	"	"	130	79	68	64	58	44	46	41	34	26	19	16	32
150	"	"	140	82	71	66	59	45	47	42	36	27	20	16	33
160	"	"	150	85	74	67	60	46	48	43	37	28	21	17	34
170	"	"	160	91	77	69	62	47	49	44	39	29	22	17	35
180	"	"	170	94	80	71	64	48	50	45	40	30	23	17	35
190	"	"	180	97	83	72	65	49	51	46	42	31	24	17	36
200	"	"	190	100	86	73	66	50	52	47	43	32	25	18	37
210	"	"	200	103	89	74	67	51	53	48	44	33	26	18	37
220	"	"	210	106	92	75	68	52	54	49	45	34	27	19	38
230	"	"	220	109	95	77	69	53	55	50	46	35	28	19	38
240	"	"	230	112	98	79	70	54	56	51	47	36	29	20	40
250	"	"	240	115	100	80	72	55	57	52	48	37	30	20	40
260	"	"	250	118	102	81	73	56	58	53	49	38	32	21	41
270	"	"	260	121	104	83	74	57	59	54	50	39	32	21	42
280	"	"	270	124	106	85	76	58	60	55	51	40	33	22	42
290	"	"	280	127	108	87	78	59	61	56	52	41	34	22	43
300	"	"	290	130	110	89	79	60	62	57	53	42	34	23	44
315	"	"	300	133	112	91	80	61	63	58	54	43	35	23	45
330	"	"	315	136	114	93	82	62	64	59	55	44	35	24	46
345	"	"	330	139	116	95	83	64	66	60	56	45	36	24	47
360	"	"	345	142	118	97	84	66	68	61	57	46	37	25	48
375	"	"	360	144	120	99	86	67	70	63	58	47	38	26	49
390	"	"	375	146	122	101	87	68	72	64	59	48	38	27	50
405	"	"	390	148	124	103	89	69	74	66	60	49	39	28	51
500	"	"	405	150	126	105	90	70	75	67	61	50	40	30	52

Joint Distances Tariff, Port Arthur Route, No. 822-A.

Distances.	Rates in cents per one hundred pounds.					Rates in dollars per standard car.				
	Carloads					Live stock—released. (See rule, page 6.)				
	Emigrant outfit.	Wheat. See note 5.	Corn. See note 4.	Hay.	Salt.	Coal, coke, sand, gravel, clay, brick, stone, ice.	Lime. See note 6.	Horses and mules.	Cattle and calves. Hog. S. D.	Sheep. S. D.
5 miles and under...	6	5	5	5	5	3	5	10.00	9.00	8.00
10 " " over...	8	6	6	6	5	4	6	10.00	10.00	9.00
15 " " " "	9	7	7	7	6	5	7	11.00	10.00	10.00
20 " " " "	10	7	7	7	7	5	8	12.00	10.00	10.00
25 " " " "	11	8	7	7	8	6	9	13.00	10.00	10.00
30 " " " "	12	8	7	7	8	6	10	14.00	11.00	10.00
35 " " " "	13	9	8	8	9	6	10	14.00	12.00	10.00
40 " " " "	15	9	8	8	10	7	11	15.00	13.00	11.00
45 " " " "	16	10	8	8	11	7	11	16.00	14.00	12.00
50 " " " "	18	10	8	8	12	7	12	17.00	15.00	13.00
55 " " " "	18	11	9	9	12	8	12	18.00	16.00	14.00
60 " " " "	19	11	9	9	13	8	13	19.00	17.00	14.00
65 " " " "	20	12	10	10	13	8	13	20.00	17.00	14.00
70 " " " "	21	12	10	10	14	9	14	21.00	18.00	15.00
75 " " " "	22	13	11	11	14	9	14	22.00	18.00	15.00

80	"	"	"	"	75	22	13	11	11	15	9	15	23.00	19.00	16.00
85	"	"	"	"	80	23	14	12	12	15	9	15	24.00	20.00	16.00
90	"	"	"	"	85	23	14	12	12	16	9	16	25.00	20.00	16.00
95	"	"	"	"	90	24	15	13	13	17	9	16	26.00	21.00	17.00
100	"	"	"	"	95	25	15	13	13	18	9	17	27.00	22.00	17.00
110	"	"	"	"	100	26	16	14	14	18	9	17	28.00	23.00	18.00
120	"	"	"	"	110	27	16	14	14	19	10	18	29.00	25.00	19.00
130	"	"	"	"	120	28	17	15	15	19	11	18	30.00	27.00	20.00
140	"	"	"	"	130	29	17	15	15	20	12	19	31.00	28.00	21.00
150	"	"	"	"	140	30	18	16	16	20	12	19	33.00	30.00	22.00
160 miles and over	"	"	"	"	150	32	18	16	16	21	13	20	35.00	32.00	23.00
170	"	"	"	"	160	32	19	17	17	21	13	20	36.00	33.00	24.00
180	"	"	"	"	170	33	19	17	17	22	13	21	38.00	35.00	25.00
190	"	"	"	"	180	33	20	18	18	22	14	21	40.00	37.00	26.00
200	"	"	"	"	190	34	20	18	18	23	14	22	41.00	39.00	27.00
210	"	"	"	"	200	34	21	19	19	23	14	22	45.00	39.00	27.00
220	"	"	"	"	210	35	22	20	20	24	15	23	47.00	39.00	28.00
230	"	"	"	"	220	36	22	20	20	24	15	23	48.00	40.00	28.00
240	"	"	"	"	230	36	23	21	21	25	15	24	49.00	40.00	29.00
250	"	"	"	"	240	37	23	21	21	25	16	24	50.00	41.00	30.00
260	"	"	"	"	250	38	24	22	22	26	16	25	50.00	41.00	31.00
270	"	"	"	"	260	39	35	23	23	26	16	25	51.00	42.00	32.00
280	"	"	"	"	270	40	26	24	24	27	17	26	51.00	42.00	33.00
290	"	"	"	"	280	41	27	25	25	27	17	26	52.00	43.00	34.00
300	"	"	"	"	290	42	28	26	26	28	17	27	52.00	44.00	35.00
315	"	"	"	"	300	43	30	27	27	28	18	28	53.00	45.00	36.00

Joint Distance Tariff, Port Arthur Route, No. 322-A.—Continued.

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Distances.	Rates in cents per one hundred pounds.										Rates in dollars per standard car.			
	Carloads.										Live stock—released. (See rule, page 5.)			
	Emigrant outfit.	Wheat. See note 8.	Corn. See note 4.	Hay.	Salt.	Coal, coke, sand, gravel, clay, brick, stone, ice.	Lime. See note 6.				Horses and mules.	Cattle and calves. Hogs, S. D.	Sheep, S. D.	
330	44	32	29	29	29	18	29	29	29	29	55.00	46.00	37.00	
345	45	34	30	30	29	18	30	30	30	30	57.00	47.00	38.00	
360	46	36	32	32	30	19	31	31	31	31	59.00	48.00	39.00	
375	47	38	33	33	30	19	32	32	32	32	61.00	49.00	40.00	
390	48	39	34	34	31	20	33	33	33	33	62.00	50.00	41.00	
405	49	39	34	34	31	20	34	34	34	34	65.00	53.00	42.00	
500	50	40	35	35	32	20	35	35	35	35	70.00	58.00	47.00	

Joint Distance Tariff, Port Arthur Route, No. 822-A.

Rate in cents per 100 pounds.		Rate in cents per 100 pounds.	
Cotton-seed meal and cake, cotton-seed hulls, fertilizers, carloads, minimum weight 24,000 lbs.		Cotton-seed meal and cake, cotton-seed hulls, fertilizers, carloads, minimum weight 24,000 lbs.	
Distances.		Distances.	
10 miles and under	5	110 miles and over	100
20 " " over	6	120 " " "	110
30 " " "	7	130 " " "	120
40 " " "	7	140 " " "	130
649			
50 miles and over	7	150 miles and over	140
60 " " "	8	160 " " "	150
70 " " "	8	170 " " "	160
80 " " "	9	180 " " "	170
90 " " "	10	200 " " "	180
100 " " "	10	300 " " "	200

* Rate on Commercial Fertilizer will be one (1) cent per ton per mile, with minimum of \$1.00 per ton.

Application of Rates.

Rates between Kansas City, Mo., or New Orleans, La., and stations on this line as named in Tariffs No. 400-A, (I. C. C. No. 534), and 453-A, (I. C. C. No. 600), or reissues, will be the maximum rates to be charged at intermediate points.

It must be understood that rates to or from Ft. Smith, Ark., Texarkana, Tex., or Shreveport, La., are terminal rates and cannot be applied as maxima.

Texas, Arkansas & Louisiana Railway.

Rates between points on the Texas, Arkansas & Louisiana Railway, viz: Atlanta and Queen City, Tex., and points on the "Port Arthur Route" south of Noel, Mo., (except points in Texas and on Live Stock C. L.), will be made by applying the rates named in Tariff based on Continuous Mileage, such mileage to be arrived at by using official mileage to or from Bloomburg, Tex., plus 20 miles.

The above to be applied only where Tariffs are not provided or where such Tariffs name higher rates than would prevail under the Mileage Basis.

Notes.

1. The rates named in this tariff apply only to and from the freight depots and sidetracks of this Company, from and to which it is agreed such rates shall apply; extra switching may entail additional expense according to the extra service performed.

Freight transported under this Tariff is subject to the rules and regulations existing at destination regarding trackage, storage, etc.

2. The maximum car load will be 10 per cent. over the marked capacity of the car. Cars should be loaded as near their capacity as possible. All in excess of maximum weights will be charged for at double the regular carload rates, or may be unloaded and 650 reloaded in separate car at expense and risk of owner, in which case regular less than carload rate will apply.

The extra charge is assessed to prevent dangerous overloading and will not be refunded.

3. Lumber Rates.—For list of articles taking same rate see Rate Circular No. 1, or subsequent issues.

4. Corn rates will apply on Rye, Oats, Barley, Corn Meal, Bran, Grain Screenings, Mill Stuffs, Hominy, Hominy Feed, Grits, Brewers' Meal, Brewers' Grits, Sorghum Seed and Melons.

5. Wheat rates will apply on Wheat, Flour, Oat Meal, Rolled Oats, Oat Groats, Rolled Wheat, Cracked Wheat and Crushed Wheat.

6. Lime rates will apply on Cement, Plaster, Stucco, Adamant Wall Plaster and Soapstone Finish, straight or mixed car loads or mixed with Lime, minimum weight 24,000 lbs.

7. Prepaid Stations.—Freight will not be received for shipment to stations where there are no agents unless all charges are prepaid through to destination, and the shipper assumes all risk, and all bills

of lading covering such shipments must bear this notation: "There is no

Joint Distance Tariff Port Arthur Route No. 822-A.

agent at the station where this freight is to be delivered, and the Railroad Company receives it upon the express understanding, of which notice is hereby given the shipper, that when it has unloaded the same from its train at that point, its liability both as common carrier and warehouseman will terminate." Agents must stamp this in full on face of bill of lading or dray ticket.

Minimum Charge.

Single shipments of one or more classes from one consignor to one consignee shall be charged for at actual weight at Tariff rates, subject to minimum charge of 25 cents for the entire consignment.

Rules and Regulations Governing Shipments of Live Stock.

Standard cars are 29 feet to and including 30 feet 6 inches in length inside measurement. Rates on horses or mules when loaded in larger or smaller cars, will be made as follows, inside measurement.

Cars less than 29 feet,	94 per cent of the Tariff for standard cars.
Cars over 30½ feet, to and including 32 feet.....	104 per cent.
Cars over 32 feet, " " 33½ "	107 "
Cars over 33½ feet, " " 36½ "	110 "
Cars over 36½ feet, " " 38 "	113 "
Cars over 38 feet, " " 40 "	116 "
Cars over 40 feet, " " 42 "	125 "
Cars over 42 feet, inside measurement.....	140 "

On all other live stock as follows:

Cars less than 29 feet.....	94 per cent.
Cars over 30½ feet, to and including 32 feet.....	104 "
Cars over 32 feet, to " " 33½ "	107 "
Cars over 33½ feet, to " " 36 "	110 "
Cars over 36 feet, to " " 38 "	113 "
Cars over 38 feet, to " " 40 "	116 "
Cars over 40 feet, inside measurement.....	125 "

1. The released rates on live stock named in this tariff will apply only when shippers execute the usual live stock contract of the form furnished by this company, Form 61, Revised, and when the animals are released to not exceed the following declared valuations:

Each Horse or Pony (gelding, mare or stallion), Mule or Jack.....	\$75.00
Each Ox or Bull.....	30.00
Each Cow.....	20.00
Each Calf.....	6.00
Each Hog.....	6.00
Each Sheep or Goat.....	3.00

When the declared value exceeds the above, an addition of 2 per cent will be made to the rate for each 100 per cent or fraction thereof of additional declared valuation per head, such rate not to exceed the not-released rates shown herein; animals exceeding in value \$800 per head will be taken only by special arrangement.

On shipments of live stock made without limitation of carrier liability at common law, this company will charge 150 per cent the rates published herein. Under this rule shippers will have the choice of executing and accepting contracts for shipments of live stock with or without limitation of liability, the rates to be made as provided herein.

2. Sheep in Double Deck or Tiered Cars.—To or from stations Sulphur Springs, Ark., and south, the rate on Sheep in double deck of tiered cars will be 125 per cent of the Cattle rate, except as otherwise shown in Tariff.

3. Live Stock in Mixed Car Loads.—The rate on mixed car loads of Live Stock will be the highest rate for any grade of stock in the car, and subject to authorized percentages for cars of different lengths.

Amendment No. 21 (Cancels No. 17) to I. C. C. No. 841.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Fort Smith Railway Co., in Connection with Texas, Arkansas and Louisiana Railway.

Amendment No. 16.

(Cancels Supplement "B." Amendments Nos. 15 and 16 include all current charges.)

"P. A. R." No. 822-A.

T. & Ft. S. No. 180-B.

To Joint Distance Tariff Applying Between All Points on the Kansas City Southern and Texarkana & Fort Smith Ryas, Noel, Mo. and South (Except Texas and Arkansas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (For Application See Page 3 of Amendment No. 15, Amendment No. 20 to I. C. C. No. 841.)

653 Subject to The Western Classification No. 42, K. C. S. T. & Ft. S. No. 1, I. C. C. No. 2183, with exceptions applicable to Arkansas Inter-State Traffic (as per Rate Circular K. C. S. No. 41-E., T. & Ft. S. No. 5-1, Arkansas Classification Exceptions No. 2-E., I. C. C. No. 54), Texas and Louisiana Traffic (as per Rate Circular K. C. S. No. 19-O., T. & Ft. S. No. 13-L., S. W. T. & Classification Exceptions No. 1-V., I. C. C. No. 485).

Issued Sept. 13, 1907. Effective Interstate Oct. 17, 1907. (Except as noted in reissued items.)

G. V. Crawford,
A. G. M. T. A. & L. Ry.,
Atlanta, Tex.
E. R. Mitchell,
G. F. A., T. & Ft. S. Ry. Co.,
G. F. A., The K. C. S. Ry. Co.,
Texarkana, Tex.
H. A. Weaver,
A. G. F. A., The K. C. S. Ry. Co.,
Kansas City, Mo.

Issued by

Chas. E. Perkins,
A. G. F. A., The K. C. S. Ry. Co.,
Kansas City, Mo.

Authority No. 8297.

E. E. Smythe,
G. F. A., The K. C. S. Ry. Co.,
Kansas City, Mo.
J. D. H. Co.—2500.

Refer to Tariff described herein and amend as follows:

Effective date.	Applying on—	From—	To—	Rate in cents per 100 lbs.
Effective Jan. 28, 1906, in amend- ment No. 17 to I. C. C. No. 841.	Lumber, Carloads, min. weight as shown in Tariff.	Maurice, Tex. (When from O. & N. W. points.)	Starks, La.	5
Interstate Oct. 17, 1907. Intrastate, Aug. 14, 1907. Railroad Com- mission of Louisi- ana, Order No. 296.	Live-Stock Rates between points in Louisiana.			

The rates as shown in Tariff on Live Stock, carloads, between points in the State of Louisiana, will apply to cars 36 feet long and under.

When shipped in cars larger than those specified above, the rates will be made on bases of the following percentages of the rates shown in Tariff.

Cars over 36 feet and not over 38 feet.....	105 per cent.
Cars over 38 feet and not over 40 feet.....	110 per cent.
Cars over 40 feet and not over 42 feet.....	125 per cent.
Cars over 42 feet and not over 44 feet.....	135 per cent.
Cars over 44 feet.....	140 per cent.

Provided, That in no instance shall the shipper be charged for larger car than he requests.

854 *Amendment No. 20 (Cancels Amendments No. 18 and 19)
to I. C. C. No. 841.*

Sep. 26, '07. 141,905.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co., in connection with Texas, Arkansas & Louisiana
Railway.

Amendment No. 15.

(Cancels Previous Amendments.)

T. & Ft. S. No. 180-2. Port Arthur Route No. 822-A.

To Joint Distance Tariff Applying between All Points on The
Kansas City Southern and Texarkana & Fort Smith Railways,
Noel, Mo., and South (Except Texas and Arkansas Local Traffic),
also between any Point North of and Any Point South of Noel,
Mo. (For Application see Page 3.)

Subject to Western Classification with exceptions applicable to
Arkansas Interstate Traffic (as per Rate Circular No. 41-D, Arkansas
Classification Exceptions I. C. C. No. 46), Texas and Louisiana
Traffic (as per Rate Circular 19-M, S. W. T., I. C. C. 455).

Issued July 6, 1906. Effective as noted.

R. R. Mitchell,

G. F. A., T. & Ft. S. Ry. Co.,

A. G. F. A., The K. C. So. Ry. Co.,
Texarkana, Tex.

G. V. Crawford,

A. G. M., T. A. & L. Ry.,
Atlanta, Tex.

H. A. Weaver,

A. G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Chas. E. Perkins,

A. G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

855

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co., Kansas City, Mo.

Authority No. 8297.

Mailed to I. S. C. C. from Kansas City, Mo., July 6, 1906.
C. E. B. Ptg. Co.—2500.

Amendment No. 15 to Joint Tariff, Port Arthur Route No. 822-A.

Refer to Tariff and amend as follows:

(Effective July 19, 1906.)

Carload Rates—in Cents per One Hundred Pounds.

Distances.				Wheat. (See note 5 in tariff.)	Corn. (See note 4 in tariff.)	Hay and straw.*
5 miles and under				6	5	5
10 " " " over	5			7	6	6
15 " " "	10			8	7	7
20 " " "	15			8	8	8
25 " " "	20			9	8	8
30 " " "	25			9	8	8
35 " " "	30			10	9	9
40 " " "	35			10	9	9
45 " " "	40			11	9	9
50 " " "	45			11	9	9
55 " " "	50			12	10	10
60 " " "	55			12	10	10
65 " " "	60			13	11	11
70 " " "	65			13	11	11
75 " " "	70			14	12	12
80 " " "	75			14	12	12
85 " " "	80			15	13	13
90 " " "	85			15	13	13
95 " " "	90			16	14	14
100 " " "	95			16	14	14
658						
110 Miles and over	100			16½	15	15
120 " " "	110			16½	15	15
130 " " "	120			17	15½	15½
140 " " "	130			17	15½	15½
150 " " "	140			18	16	16
160 " " "	150			18	16	16
170 " " "	160			19	17	17
180 " " "	170			19	17	17
190 " " "	180			20	18	18
200 " " "	190			20	18	18
210 " " "	200			21	19	19
220 " " "	210			22	20	20
230 " " "	220			22	20	20
240 " " "	230			23	21	21

250	"	"	"	240	23	21	21
260	"	"	"	250	24	22	22
270	"	"	"	260	25	23	23
280	"	"	"	270	26	24	24
290	"	"	"	280	27	25	25
300	"	"	"	290	28	26	26
315	"	"	"	300	30	27	27
330	"	"	"	315	32	29	29
345	"	"	"	330	34	30	30
360	"	"	"	345	36	32	32
375	"	"	"	360	38	33	33
390	"	"	"	375	39	34	34
405	"	"	"	390	39	34	34
500	"	"	"	405	40	35	35

Maximum Rates.

(Effective April 3, 1902—Reissue.)

Class Rates will be Maximum to be changed on commodities named in this Tariff.

Reconsignment of Lumber.

(Effective August 1, 1906.) (Circular L. 225, I. C. C. No. 1842.)

Lumber reconsigned in transit or after arrival at destination will be subject to an additional charge of \$5.00 per car. Cars to be subject to regular demurrage charges in addition thereto.

Guides, Strips, Standards, and Supports.

(Effective February 25, 1905—Reissue.)

Allowance for Guides and Standards between Points both of which are Located in Louisiana on the K. C. S. Ry.

An allowance of 500 pounds per car will be made for weight of Guides and Standards used in securing shipments of lumber, Logs and other forest products, loaded on flat, open or gondola cars, whenever they are necessary. (R. R. C. of La. Order No. 500.)

Amendment to No. 15 to Joint Tariff, Port Arthur Route, No. 822-A.

(Effective March 20, 1906—Reissue.)

Standards, Strips and Supports on Carload Shipments of Lumber.

An allowance of 500 pounds per car will be made for weight of Standards, Strips and Supports used on carload shipments of Lumber (exclusive of Logs) between all points named in Tariff (except as above between Louisiana points) loaded on flat or gondola cars, but in no case must less than the minimum carload weight specified be charged for each car.

Local Rates on Business Received from or Delivered to Connecting Lines in Louisiana.

(Effective July 31, 1905—Reissue.)

On shipments destined to or coming from points on connecting lines, moving wholly within the State of Louisiana, apply 90 per cent of rates named herein for movement over this line. Where there is a drayage charge between depots at junction point, such drayage charge will be in addition to rate. This rule will not apply where specific through rates are published.

Application of Rates.

(Effective June 20, 1906—Reissue.)

Rates Named in Tariff, as amended, will apply as follows:

Local Texas tariff will not apply on local Texas Traffic.

Local Arkansas Traffic will not apply on local Arkansas Traffic.

Local Louisiana Traffic will apply locally between points in Louisiana.

Inter-State Traffic will apply on shipments originating at or destined to inter-State points when originating at or destined to Arkansas, Texas, Louisiana or Indian Territory points.

Will apply on Inter-State shipments between all points Noel, Mo., and south, and between any point north of Noel, Mo., and points south thereof.

Maxima Rates.

(Effective October 21, 1901—Reissue.)

Cancel application of rates, as shown in Tariff, and substitute the following: "The Maxima Rates between points covered by this Tariff shall be the higher Kansas City rate prevailing at point of

origin or destination, as per Tariffs 363-C (I. C. C. 1547) and 400-B (I. C. C. 1470) or reissues, except where the higher New Orleans rate at the same points, as per Tariff 453-C (I. C. C. 1586 or reissues, is less, in which case the latter will apply as maxima."

Example: First-class rate from Singer, La., to Ashdown, Ark.

Distance 236.8 Miles. Distance Tariff rate \$1.12 per 100 lbs.

First class Kansas City to Ashdown.....	\$1.00 per 100 lbs.
First class Kansas City to Singer.....	1.10 per 100 lbs.
The Higher Kansas City Rate.....	1.10 per 100 lbs.
First class New Orleans to Ashdown.....	1.20 per 100 lbs.
First class New Orleans to Singer.....	.80 per 100 lbs.
The higher New Orleans Rate.....	1.20 per 100 lbs.

Result, the higher Kansas City rate, \$1.10 per 100 lbs. should apply.

It must be understood that rates to or from Ft. Smith, Ark., Texarkana, Tex., or Shreveport, La., are terminal rates and cannot be applied as maxima.

Minimum Weight on Hay, Car Loads.

(Effective February 27, 1901—Reissue.)

The following Minimum Weights will govern on Hay, C. L. (except between Louisiana points):

When loaded in cars 30 feet and under in length....	16,000 lbs.
When loaded in cars over 30 feet to and including 32 feet	18,000 lbs.
When loaded in cars over 32 feet to and including 34 feet	19,000 lbs.
When loaded in cars over 34 feet to and including 36 feet	20,000 lbs.
When loaded in cars over 36 feet in length.....	22,000 lbs.

The following Minimum Weights will govern on Hay, C. L. between points in Louisiana:

(Effective June 27, 1903—Reissue.)

Cars 34 feet and under in length.....	17,000 lbs.
Cars over 34 feet in length.....	20,000 lbs.

Hogs in Double Deck or Tiered Cars.

(Effective September 7, 1903—Reissue.)

The charge on Hogs in Double Deck or Tiered Cars will be double the charge on Hogs in Single Deck Cars of same dimensions.

Rules and Regulations Governing Shipments of Live Stock, C. L.

(Effective September 7, 1903—Reissue.)

1. The owners of Live Stock must care for shipments while on the way at their own expense of feeding and watering, if advanced by any of the lines over which the shipments pass, must be paid on delivery at destination by owner or consignee, in addition to contract rate.
2. Agents must in all cases give the full name of shipper on each way-bill.
3. Agents must see that the doors, cross-bars and floors of cars are in perfect order. They will render to the shippers all possible assistance in loading and caring for stock.

Amendment No. 15 to Joint Tariff, Port Arthur Route, No. 822-A.

*Rules and Regulations Governing Shipments of Live Stock,
C. L.—Con.*

4. Furnishing Stock Cars.—The different sizes of Stock cars will be furnished as near as possible in accordance with shipper's orders. Agents will not guarantee to furnish any particular size of cars, and will way-bill at full Tariff rates according to the size of the cars used.
5. Live Stock Bedding.—Bedding will be furnished by this line without charge; but when furnished by the shipper at his own expense, a reduction of 25 cents per car in the rate is authorized, way-bills to bear notation to that effect in each case, this notation to be certified to by the forwarding agent.

Transportation of Attendants in Charge of Live Stock.

(Effective May 16, 1904—Reissue.)

The following rules will govern the passage of men in charge of Live Stock between points on the Port Arthur Route.

First—One man will be passed in charge of one car of Cattle, Hogs or Sheep, no return pass to be given.

Second—One man each way in charge of one car of Horses or Mules.

Third—One man each way in charge of two to five cars of Live Stock.

Fourth—Two men each way in charge of six to ten cars.

Fifth—Three men each way in charge of eleven or more cars, which is the maximum number that will be passed with stock from one shipper on same train.

Sixth—Return passes for men in charge of Horses and Mules to be used within sixty days, and for men in charge of other stock within twenty days after cars arrive at terminal points or destina-

tion points on this line; the return passage to be commenced
661 within twenty-four hours after issuance of passes.

Seventh—No return passes will be issued to parties who do not accompany the shipment, and agents and others are required to see to it that in issuing contracts no names are inserted therein but those of the party or parties actually with the stock, and the signatures of the parties whose names are thus inserted must be shown upon the contract as a means of identification.

Eighth—When two cars of stock are shipped from different stations by the same owner and are received at destination on the same train, man in charge shall be entitled to return pass to station nearest to the market.

Ninth—Women and children not to be passed in charge of Live Stock.

For return pass the agent at destination will countersign and fill out the blank on back of Live Stock Contract for such of the persons as do actually return and none other, drawing pen through remaining lines. Agents will refuse to enter any name or names upon contract or return pass but those of owners or employees, without regard to passes required by number of cars.

Feeding and Watering Live Stock.

The attention of Shippers, Agents and Conductors is called to the following Federal Statute, which prescribes and regulates the time for feeding and watering of Live Stock which is transported by railway companies:

Sec. 4386.—No Railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals are conveyed from one State to another, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars, boats or vessels

of any description for a longer period than twenty-eight
662 consecutive hours without unloading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies heretofore stated.

Sec. 4387.—Animals so unloaded shall be properly fed and watered during such rest by the owner or the person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same at the expense of the owner or the person in custody thereof, and such company, owners or masters shall in such case have a lien upon such animals for the food, care and custody furnished, and shall not be liable for any detention of such animals.

Sec. 4388.—Any company, owner or custodian of such animals, who knowingly and wilfully fails to comply with the provisions of the two preceding sections shall, for every such failure, be liable for and forfeit a penalty of not less than one hundred nor more than five hundred dollars. But when animals are carried in cars, boats or vessels in which they can and do have proper food, water, space, and opportunity to rest, the provisions in regard to their being unloaded shall not apply.

Sec. 4389.—The penalty created by the preceding sections shall be recovered by civil action in the name of the United States, in the circuit or district court of the United States, holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business, and it shall be the duty of all the United States marshals their deputies and subordinates, to prosecute all violations which come to their notice or knowledge.

Sec. 4390.—Any person or corporation entitled to a lien under section (4453) (4387), may enforce the same by a petition filed in the court holden within the district where the food, care
663 and custody have been furnished, or the owner or custodian of the property resides; and the court shall have power to issue all suitable process for the enforcement of such lien by sale or otherwise, and to compel the payment of all costs, penalties, charges and expenses of proceedings under the provision of this and the preceding sections.

Agents must note on their way-bills, for shipments of Live Stock the date and hour on which they were last fed and watered. If shipments are received from connecting lines without this information appearing on billing it must be ascertained and stated on way-bills. Conductors handling Live Stock must see that the cars containing animals which have been in cars without food and water longer than permitted by the statutes are set out at stock pens and properly cared for.

The expense of feeding animals under these instructions must be added to the way-bill and will follow the shipments to destination and be collected from the consignee in addition to the freight.

All employees will be held personally responsible for any violation of the laws as above set forth.

Cancellation Notice.

(Effective May 18, 1903—Reissue.)

Cancel the application of rates on wheat and articles taking same rates, C. L., and Corn and Articles taking same rates, C. L., from Shreveport, La., Lake Charles and West Lake, La., and Beaumont, Texas, to points in Louisiana on the K. C. So. Ry. For rates from Beaumont, Tex., see Tariffs P. A. R. No. 875-A, T. & Ft. S. No. 201-B (I. C. C. No. 997), and P. A. R. 1643, T. & Ft. S. No. 636-A (I. C. C. No. 1823), or reissues.

Texas, Arkansas & Louisiana Railway.

(Effective September 27, 1900—Reissue.)

Cancel rates named in Tariff between points on the Port Arthur Route and Queen City, Tex., account latter point having been discontinued by the T., A. & L. Ry.

004

Minimum Charge.

(Effective December 22, 1900—Reissue.)

All shipments between points in Louisiana on The K. C. So. Ry. will be charged at actual weight and rate with a minimum charge of 25 cents for any single shipment, except that on shipments to and from points in Louisiana on connecting lines, the minimum charge for this company will be 20 cents for any single shipment.

For rates on Ice, C. L. and L. C. L., also on Rough Rice, C. L., between points in Louisiana, see Tariff No. 274-C, or reissues.

To arrive at Rates under Tariff, as amended, apply the Mileage shown in "Official List of Stations" No. 19 (I. C. C. No. 1790), or reissues.

Amendment No. 19 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in connection with Texas, Arkansas and Louisiana Ry.

Amendment No. 14.

(Am'd'ts 13 and 14 in Effect.)

To joint distance tariff, T. & Ft. S. No. 180-B, "P. A. R." No. 822-A, applying between all points on the Kansas City Southern and Texarkana & Fort Smith Rys., Noel, Mo., and south (except Texas & Arkansas local traffic); also between any point north of and any point south of Noel, Mo.

Subject to Western Classification.

With exceptions applicable to Arkansas Interstate Traffic (as per Rate Circular No. 41-D. Arkansas Classification Exceptions 665 I. C. C. No. 46).

Texas and Louisiana Traffic (as per Rate Circular) 19-M. S. W. T., I. C. C. 465).

Issued June 21, 1906. Effective July 4, 1906.
 R. R. Mitchell, G. F. A., T. & Ft. S. Ry. Co., Texarkana, Texas.
 E. E. Smythe, G. F. A. The K. C. S. Ry. Co., Kansas City, Mo.
 Authority No. 8297.
 Mailed to I. C. C. from Kansas City, Mo., June 21, 1906.

Amendment 14 to Distance Tariff "P. A. R." No. 822-A.

Refer to Tariff and amend as follows:

Carload Rates—In Cents per Hundred Pounds.

Distances.		Wheat.		Corn.		Hay & straw.		Distances.		Wheat.		Corn.		Hay & straw.	
5 Miles and under															
10	5	6	6½	5	5½	4	155 miles and over	150	19	17	17	17	17	17	17
15	10	7	7½	6	6½	5½	"	155	19	17	17	17	17	17	17
20	15	7½	8	6½	7	6	"	160	20	18	18	18	18	18	18
25	20	8	8½	7	7½	6½	"	165	20	18	18	18	18	18	18
30	25	8½	9	7½	8	7	"	170	20	18	18	18	18	18	18
35	30	9	9½	8	8½	7½	"	175	20	18	18	18	18	18	18
40	35	9½	10	8½	9	8	"	180	21	19	19	19	19	19	19
45	40	10	10½	9	9½	8½	"	185	21	19	19	19	19	19	19
50	45	10½	11	9	9½	9	"	190	21	19	19	19	19	19	19
55	50	11	11½	10	10½	9½	"	195	21	19	19	19	19	19	19
60	55	11½	12	10	10½	10	"	200	22	20	20	20	20	20	20
65	60	12	12½	11	11½	10½	"	205	22	20	20	20	20	20	20
70	65	12½	13	11	11½	11	"	210	23	21	21	21	21	21	21
75	70	13	13½	11½	12	11½	"	220	23	21	21	21	21	21	21
80	75	13½	14	12	12½	12	"	230	24	22	22	22	22	22	22
85	80	14	14½	12	12½	12½	"	240	24	22	22	22	22	22	22
90	85	14½	15	12½	13	13	"	250	25	23	23	23	23	23½	23½
95	90	15	15½	13	13½	13½	"	260	26	23½	23½	23½	23½	24	24
606								270							
100 Miles over	95	15½	16	13½	14	13½	miles and over	260	26	23½	23½	23½	23½	24	24
105	100	16	16½	14	14½	14½	"	270	26½	24	24	24	24	24	24
110	105	16½	17	14½	15	15	"	280	27	24	24	24	24	24	24
115	110	17	17½	15	15½	15½	"	290	27	24	24	24	24	24	24
120	115	17½		15½			"	300	27	24	24	24	24	24	24

135	120	18	16	315	300	30	27
130	125	18	16	330	315	32	29
135	130	18	16	345	330	34	30
140	135	18	16	360	345	36	32
145	140	19	17	375	360	33	33
150	145	19	17	390	375	39	34
				405	390	39	34
				500	405	40	35

* And articles taking same rates as named in Tariff.

Amendment No. 18 (Cancels Amendment Nos. 5, 11, 13, 15 and 17) to I. C. C. No. 841.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., in connection with Texas, Arkansas & Louisiana Railway.

Amendment No. 13.

(Cancels Previous Amendments and Includes All Changes.)

To Joint Distance Tariff, T. & Ft. S. No. 180-B, Port Arthur Route No. 822-A, applying between all points on The Kansas City Southern and Texarkana & Fort Smith Rys., Noel, Mo.,
 667 and South (except Texas and Arkansas local traffic); also
 Mo. between any point north of and any point south of Noel,
 Mo.

(For Application see page 2.)

Subject to Western Classification.

With exceptions applicable to Arkansas Interstate Traffic (as per Rate Circular No. 41-D, Arkansas Classification Exceptions I. C. C. No. 46), Texas and Louisiana Traffic (as per Rate Circular 19-M, S. W. T. C., I. C. C. 455).

Issued June 7, 1906. Effective as noted.

R. R. Mitchell, G. F. A., T. & Ft. S. Ry. Co.; A. G. F. A., The K. C. So. Ry. Co., Texarkana, Tex.

H. A. Weaver, A. G. F. A., The K. C. So. Ry. Co., Kansas City, Mo.

G. V. Crawford, A. G. M., T. A. & L. Ry. Co., Atlanta, Tex.

Chas. E. Perkins, A. G. F. A., The K. C. So. Ry. Co., Kansas City, Mo.

E. E. Smythe, G. F. A., The K. C. So. Ry. Co., Kansas City, Mo. Authority No. 8297.

Mailed to I. S. C. C. from Kansas City, Mo., June 7, 1906.

T.-D. Ptg. Co.-2500.

Amendment No. 13 to Joint Tariff "Port Arthur Route" No. 822 A.

Refer to Tariff, as amended, and make the following additions:

Maximum Rates.

(Effective April 3, 1902. Reissue.)

Class rates will be the maximum to be charged on commodities named in this Tariff.

Guides, Strips, Standards, and Supports.

(Effective February 25, 1906. Reissue.)

Allowance for Guides and Standards Between Points Both of Which are Located in Louisiana on the K. C. S. Ry.

An allowance of 500 pounds per car will be made for weight of Guides and Standards used in securing shipments of Lumber, Logs and other forest products, loaded on flat, open or gondola cars, whenever they are necessary. (R. R. C. of La. Order No. 500).

(Effective March 20, 1906. Reissue.)

Standards, Strips and Supports on Carload Shipments of Lumber.

An allowance of 500 pounds per car will be made for weight of Standards, Strips and Supports used on car load shipments of Lumber (exclusive of Logs) between all points named in Tariff (except as above between Louisiana points), loaded on flat or gondola cars, but in no case must less than the minimum car load weight specified be charged for each car.

Local Rates on Business Received from or Delivered to Connecting Lines in Louisiana.

(Effective July 31, 1905. Reissue.)

On shipments destined to or coming from points on connecting lines, moving wholly within the State of Louisiana, apply 90 per cent of rates named herein for movement over this line. Where there is a drayage charge between depots at junction point, such drayage charge will be in addition to rate. This rule will not apply where specific through rates are published.

Application of Rates.

(Effective June 20, 1906.)

Rates named in Tariff as amended will apply as follows:

Local Texas Traffic will not apply on local Texas Traffic.

Local Arkansas Traffic will not apply on local Arkansas Traffic.

Local Louisiana Traffic will apply locally between points in Louisiana.

Interstate Traffic will apply on shipments originating at or destined to interstate points when originating at or destined to Arkansas, Texas, Louisiana or Indian Territory points.

Will apply on inter-state business between all points Noel, Mo. and south, and between any point north of Noel, Mo., and point south thereof.

Maxima Rates.

(Effective October 21, 1901. Reissue.)

Cancel application of rates, as shown in Tariff, and substitute the following: "The maxima rates between points covered by this Tariff shall be the higher Kansas City rate prevailing at point of origin or destination, as per Tariffs 363-C (I. C. C. 1547), and 400-B (I. C. C. 1470), or reissues, except where the higher New Orleans rate at the same points, as per Tariff 453-C (I. C. C. 1586), or re-issues, is less, in which case the latter will apply as maxima:

Example: First-class rate from Singer, La., to Ashdown, Ark.:

Distance 236.8 miles. Distance Tariff rate....	\$1.12 per 100 lbs.
First Class Kansas City to Ashdown.....	1.00 per 100 lbs.
First Class Kansas City to Singer.....	1.10 per 100 lbs.
The higher Kansas City rate.....	1.10 per 100 lbs.
First class New Orleans to Ashdown.....	1.20 per 100 lbs.
First class New Orleans to Singer .....	.80 per 100 lbs.
The higher New Orleans rate	1.20 per 100 lbs.

Result, the higher Kansas City, rate, \$1.10 per 100 lbs., should apply.

It must be understood that rates to or from Ft. Smith, Ark., Texarkana, Tex., or Shreveport, La., are terminal rates and cannot be applied as maxima.

Minimum Weight on Hay, Car Loads.

(Effective February 27, 1901. Reissue.)

The following Minimum Weights will govern on Hay, C. L. (except between Louisiana points):

When loaded in cars 30 feet and under in length.....	16,000 lbs.
When loaded in cars over 30 feet to and including 32 feet	18,000 lbs.
When loaded in cars over 32 feet to and including 34 feet	19,000 lbs.
When loaded in cars over 34 feet to and including 36 feet	20,000 lbs.
When loaded in cars over 36 feet in length	22,000 lbs.

The following Minimum Weights will govern on Hay, C. L., between points in Louisiana:

(Effective June 27, 1903. Reissue.)

Cars 34 feet and under in length	17,000 lbs.
Cars over 34 feet in length	20,000 lbs.

Hogs in Double-deck or Tiered Cars.

(Effective September 7, 1903. Reissue.)

The charge on Hogs in Double Deck or Tiered Cars will be double the charge on Hogs in Single Deck Cars of same dimension.

Rules and Regulations Governing Shipments of Live Stock, C. L.

(Effective September 7, 1903. Reissue.)

1. The owners of Live Stock must care for shipments while on the way at their own expense and risk, and the expenses of feeding and watering, if advanced by any of the lines over which the shipments pass, must be paid on delivery at destination by owner or consignee, in addition to contract rate.

2. Agents must in all cases give the full name of shipper on each way-bill.

3. Agents must see that the doors, cross-bars and floors of cars are in perfect order. They will render to the shippers all possible assistance in loading and caring for stock.

4. Furnishing Stock Cars.—The different sizes of stock cars will be furnished as near as possible in accordance with shipper's orders. Agents will not guarantee to furnish any particular size cars, and will way-bill at full Tariff rates according to the size of the cars used.

5. Live Stock Bedding.—Bedding will be furnished by this line without charge; but when furnished by the shipper at his own expense, a reduction of 25 cents per car in the rate is authorized, way-bills to bear notation to that effect in each case, this notation to be certified to by the forwarding agent.

Transportation of Attendants in Charge of Live Stock.

(Effective May 16, 1904. Reissue.)

The following rules will govern the passage of men in charge of Live Stock between points on the Port Arthur Route:

671 First. One man will be passed in charge of one car of Cattle, Calves, Hogs or Sheep, no return pass to be given.

Second. One man each way in charge of one car of Horses or Mules.

Third. One man each way in charge of two to five cars of Live Stock.

Fourth. Two men each way in charge of six to ten cars.

Fifth. Three men each way in charge of eleven or more cars, which is the maximum number that will be passed with stock from one shipper on same train.

Sixth. Return passes for men in charge of Horses and Mules to be used within sixty days, and for men in charge of other stock within twenty days after cars arrive at terminal points or destination.

points on this line; the return passage to be commenced within twenty-four hours after issuance of passes.

Seventh. No return passes will be issued to parties who do not accompany the shipment, and agents and others are required to see to it that in issuing contracts no names are inserted therein but those of the party or parties actually with the stock, and the signatures of the parties whose names are thus inserted must be shown upon the contract as a means of identification.

Eighth. When two cars of stock are shipped from different stations by the same owner and are received at destination on same train, man in charge shall be entitled to return pass to station nearest to the market.

Ninth. Women and children not to be passed in charge of Live Stock.

For return pass the agent at destination will countersign and fill up the blank on back of Live Stock Contract for such of the persons as do actually return and none other, drawing pen through remaining lines. Agent will refuse to enter any name or names upon contract or return pass but those of owners or employees, without regard to passes required by number of cars.

Feeding and Watering Live Stock.

The attention of Shippers, Agents and Conductors is called to the following Federal Statute, which prescribes and regulates the time for feeding and watering of Live Stock which is transported by railway companies:

672 SEC. 4386. No Railroad company within the United States whose road forms any part of a line of road over which cattle, sheep, swine or other animals are conveyed from one State to another, or the owners or masters of steam, sailing, or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars, boats or vessels of any description for a longer period than twenty-eight consecutive hours without unloading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated.

SEC. 4387. Animals so unloaded shall be properly fed and watered during such rest by the owner or the person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same at the expense of the owner or the person in custody thereof; and such company, owners or masters shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for any detention of such animals.

SEC. 4388. Any company, owner or custodian of such animals,

who knowingly and wilfully fails to comply with the provisions of the preceding sections, shall, for every such failure, be liable for any forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars. But when animals are carried in cars, boats or vessels in which they can and do have proper food, water, space, and opportunity to rest, the provisions in regard to their being unloaded shall not apply.

SEC. 4389. The penalty created by the preceding sections shall be recovered by civil action in the name of the United States, in the circuit or district court of the United States, holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business, and it shall be the duty of all the United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge.

SEC. 4390. Any person or corporation entitled to a lien under section (4453) (4387), may enforce the same by a petition filed in the district court holden within the district where the food, care and custody have been furnished, or the owner or custodian of the property resides; and the court shall have power to issue all suitable process for the enforcement of such lien by sale or otherwise, and to compel the payment of all costs, penalties, charges and expenses of proceedings under the provisions of this and the preceding sections.

Agents must note on their way-bills for shipments of Live Stock the date and hour on which they were last fed and watered. If shipments are received from connecting lines without this information appearing on billing it must be ascertained and stated on way-bills. Conductors handling Live Stock must see that cars containing animals which have been in cars without food and water longer than permitted by the statute are set out at stock pens and properly cared for.

The expense of feeding animals under these instructions must be added to the way-bill and will follow the shipments to destination and be collected from the consignee in addition to the freight.

All employees will be held personally responsible for any violation of the laws as above set forth.

Cancellation Notice.

(Effective May 18, 1903. Reissue.)

Cancel the application of Rates on Wheat and Articles taking same rates, C. L., and Corn and Articles taking same rates, C. L., from Shreveport, La., Lake Charles and West Lake, La., and Beaumont, Texas, to points in Louisiana on The K. C. So. Ry. For rates from Beaumont, Tex., see Tariffs P. A. R. No. 875-A, T. & Ft. S. No. 201-B (I. C. C. No. 997), and P. A. R. 1643, T. & Ft. S. No. 638-A (I. C. C. No. 1323), or reissues.

Texas, Arkansas & Louisiana Railway.

(Effective September 27, 1900. Reissue.)

Cancel rates named in Tariff between points on the Port Arthur Route and Queen City, Tex., account latter point having been discontinued by the T. A. & L. Ry.

674

Minimum Charge.

(Effective December 22, 1900. Reissue.)

All shipments between points in Louisiana on The K. C. So. Ry. will be charged at actual weight and rate with a minimum charge 25 cents for any single shipment except that on shipments to and from points in Louisiana on connecting lines, the minimum charge for this company will be 20 cents for any single shipment.

For rates on Ice, C. L. and L. C. L., also on Rough Rice C. L. between points in Louisiana, see Tariff No. 274-C, or reissues.

To arrive at Rates under Tariff, as amended, apply the Mileage shown in "Official List of Stations" No. 19 (I. C. C. No. 1790), or reissues.

Amendment No. 17 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry.

Amendment No. 12 (Amdts. 1, 7, 9, 11, and 12 in Effect) to Joint Distance Tariff.

F. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern and Texarkana & St. Smith Railways South of Noel, Mo. (Except Texas Local Traffic); also Between any Point North of and any Point South of Noel, Mo. (Except Between Points Within the State of Arkansas).

Issued March 14, 1906. Effective as Noted.

675

Effective Feb. 25, 1906.

Allowance on Guides and Standards Between Points Both of Which are Located in Louisiana on the K. C. S. Ry.

An allowance of 500 pounds per car will be made for weight of Guides and Standards, used in securing shipments of lumber, logs

and other forest products, loaded on flat, open or gondola cars, whenever they are necessary.. (R. R. C. of La. order No. 500.)

Effective March 20, 1906.

Standards, Strips and Supports on Carload Shipments of Lumber.

An allowance of 500 pounds per car will be made for weight of Standards, Strips and Supports used on carload shipments of lumber (exclusive of logs), between all points named in Tariff (except as above between Louisiana points), loaded on flat or gondola cars, but in no case must less than the minimum carload weight specified be charged for each car.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Chas. E. Perkins,

G. F. A., T. & Ft. S. Ry. Co.,
Texarkana, Texas.

Authority No. 9003.

Mailed to I. S. C. C. from Kansas City, Mo., March 14, 1906.
(350.)

Oct. 7, '07—143,207.

Amendment No. 17 (Cancels No. 16) to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co., "Port Arthur Route."

*Supplement "B" (Cancels Supplement "A") to Joint Distance
Tariff.*

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

676 Applying Between All Points on The Kansas City Southern
and Texarkana & Ft. Smith Railways, South of Noel, Mo.
(Except Texas Local Traffic); also Between Any Point
North and Any Point South of Noel, Mo. (Except Between Points
within the State of Arkansas).

Issued Jan. 29, 1906. Effective Jan. 28, 1906.

Refer to Tariff and amend as follows:—

Rates in Cents per One Hundred Pounds.

Applying on—	From—	To—	Rate
Lumber, Carloads, Min. W't as per Tariff.	Maurice, Tex. (When from O. & N. W. points.)	*Starke, La.	5

*No. Agent. Freight must be prepaid.

Chas. E. Perkins,
G. F. A., T. & Ft. S. Ry. Co.,
Texarkana, Texas.
E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 8620.
Mailed to I. C. C. from Kansas City, Mo., Jan. 29, 1906.
Re-issue of rates in effect.

Amendment No. 16 to-I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co., "Port Arthur Route," in Connection with Texas,
Arkansas & Louisiana Ry.

Supplement "A" to Joint Distance Tariff.

677 T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern and
Texarkana & Ft. Smith Railways, South of Noel, Mo. (Except
Texas Local Traffic); also Between Any Point North of and Any
Point South of Noel, Mo. (Except Between Points within the
State of Arkansas).

Issued Jan. 22, 1906. Effective Jan. 28, 1906.
Refer to Tariff and amend as follows:—

Applying on—	From—	To—	Rate
Lumber, Carloads, Min. Wt. as per Tariff	(When from C. & N. W. points) Maurice, Texas.	Starke, La.	5

E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 8620.
Mailed to I. C. C. from Kansas City, Mo., Jan. 22, 1906.

(100.)

Amendment No. 15 (Cancels No. 14) to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry.

678 *Amendment No. 11 (Cancels 10) (Amendments 1, 7, 9 and 11 in Effect) to Joint Distance Tariff.*

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern and Texarkana & Ft. Smith Railways, South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued July 25, 1905. Effective July 31, 1905.

Refer to Tariff and amend as follows:—

Local rates on business received from or delivered connecting lines in Louisiana.

On Shipments destined to or coming from points on connecting lines, moving wholly within the state of Louisiana, apply 90% of rates named herein for movement over this line; where there is a drayage charge between depots at junction point, such drayage charge will be in addition to rate. This rule will not apply where specific through rates are published.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.;
Kansas City, Mo.

Authority No. 8620.

Mailed to I. C. C. from Kansas City, Mo., July 25, 1905.

(350.)

Amendment No. 14 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry. Co.

679 *Amendment No. 10 (Am'd'ts 1, 7, 9 and 10 in Effect) to Joint Distance Tariff.*

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern and Texarkana & Ft. Smith Railways, South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued Nov. 30, 1904. Effective Nov. 14, 1904.

Refer to Tariff and amend as follows:

Maximum Joint Rates in Louisiana.

On shipments destined to or coming from points on connecting lines, moving wholly within the State of Louisiana, 90% of rates named in tariff as amended will apply as maximum except where specific through rates are established.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 8159.

Mailed to I. C. C. from Kansas City, Mo., Nov. 30, 1904.

R. R. Commission of Louisiana Order No. 414.

(350.)

Amendment No. 13 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry. Co.

680 *Amendment No. 9 (Cancels No. 8) to Joint Distance Tariff.*

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern and Texarkana & Ft. Smith Railways, South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued May 12th, 1904. Effective May 16th, 1904.

Chas. E. Perkins,
G. F. A., T. & Ft. S. Ry. Co.,
Texarkana, Texas.
E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 8159.
Mailed to I. S. C. C. from Kansas City, Mo., May 12th, 1904.
(Re-issued.)

(350.)

Amendment No. 9 to Joint Tariff "P. A. R." No. 822-A.

Refer to Tariff and amend as follows:

Cancel application of rules and regulations regarding Transportation of attendants in charge of Live Stock named in Tariff, as amended, and apply the following:—

First. One man will be passed in charge of one car of Cattle, Calves, Hogs or Sheep, no return pass to be given.

Second. One man each way in charge of one car of Horses or Mules.

Third. One man each way in charge of two to five cars of Live Stock.

Fourth. Two men each way in charge of six to ten cars.

Fifth. Three men each way in charge of eleven or more cars, which is the maximum number that will be passed with stock from one shipper on the same train.

Sixth. Return passes for men in charge of Horses and Mules to be used within sixty days, and for men in charge of other stock

681 within twenty days after cars arrive at terminal points or destination points on this line, the return *passes* to be commenced within twenty-four hours after issuance of passes.

Seventh. No return passes will be issued to parties who do not accompany the shipment, and Agents and others are required to see to it that in issuing contracts no names are inserted therein but those of the party or parties actually with the stock, and the signatures of the parties whose names are thus inserted must be shown upon the contract as a means of identification.

Eighth. When two cars of stock are shipped from different stations by the same owner, and are received at destination on same train, man in charge shall be entitled to return pass to station nearest to the market.

Ninth. Women and Children not to be passed in charge of Live Stock.

For return pass, the Agent at destination will countersign and fill up the blank on back of Live Stock Contract for such of the persons as do actually return and none other, drawing pen through remaining lines. Agent will refuse to enter any name or names upon contract or return pass but those of owners or employees without regard to passes required by number of cars.

Reissued 11/23/05.†

Reissued 11/23/05.†

[†In pencil in copy.]

(350.)

Amendment No. 12 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Railway Co.

Amendment No. 8. Amendments No. 1, 7, & 8 Include All Changes to Joint Distance Tariff.

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

682 Applying Between All Points on the Kansas City Southern and Texarkana & Fort Smith Railways South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of, and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued January 12th, 1904. Effective Jan. 1st, 1904.
Refer to Tariff and amend as follows:

Return Transportation Account Live Stock Shipments.

Return Transportation to parties who accompany Live Stock will not be granted on or after January 1st, 1904.

Chas. E. Perkins,

G. F. A., T. & Ft. S. Ry. Co.,
Texarkana, Texas.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 7743.

Mailed to I. S. C. C. from Kansas City, Mo., Jan. 12th, 1904.

(350.)

Amendment No. 11 (Cancels Amendments No-. 6, 7, 8, 9, and 10) to I. C. C. No. 841.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., in Connection with Texas, Arkansas & Louisiana Railway Co.

Amendment No. 7 (Cancels Amendment No-. 2, 3, 4, 5, and 6. Amendments No-. 1 and 7 Include All Changes) to Joint Distance Tariff.

T. & Ft. S. No. 180-B. Port Arthur Route No. 822-A,

683 Applying Between All Points on The Kansas City Southern and Texarkana & Fort Smith Rys., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Subject to Western Classification.

with exceptions applicable to Arkansas Interstate Traffic (as per Rate Circular No. 41, Arkansas Classifications Exceptions I. C. C. No. 15), Texas and Louisiana traffic (as per Rate Circular 19-H, S. W. T. C., I. C. C. 285).

Issued September 1, 1903. Effected as noted.

Chas. E. Perkins,

G. F. A., G. F. A., T. & Ft. S. Ry. Co.;

A. G. F. A., The K. C. So. Ry. Co.,
Texarkana, Tex.

H. A. Weaver,

A. G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Geo. N. Goodwyn,

G. M., T. A. & L. Ry.,
Atlanta, Tex.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 7193.

Mailed to I. S. C. C. from Kansas City, Mo., Sept. 1, 1902. T. D.

Amendment No. 7 to Joint Tariff "Port Arthur Route" No. 822-A.

Refer to Tariff, as amended, and make the following additions:

Maximum Rates.

(Effective April 3, 1902. Reissue.)

Class Rates will be the Maximum to be charged on commodities named in this Tariff.

Hay, C. L., Minimum Weight.

Applies only between points in Louisiana.

(Effective June 27, 1903. Reissue.)

684	Cars 34 feet in length and under.....	17,000 pounds
	Cars over 34 feet in length	20,000 pounds

Hogs in Double Deck or Tiered Cars.

(Effective September 7, 1903.)

The charge on Hogs in Double Deck or Tiered Cars will be double the charge on Hogs in Single Deck Cars of same dimension

Rules and Regulations Governing Shipments of Live Stock, C. L.

(Effective September 7, 1903.)

1. The owners of Live Stock must care for shipments while on the way at their own expense and risk, and the expense of feeding and watering, if advanced by any of the lines over which the shipments pass, must be paid on delivery at destination by owner or consignee, in addition to contract rate.

2. Agents must in all cases give the full name of shipper on each way-bill.

3. Agents must see that the doors, cross-bars and floors of cars are in perfect order. They will render to the shippers all possible assistance in loading and caring for stock.

4. Furnishing Stock Cars.—The different sizes of stock cars will be furnished as near as possible in accordance with shipper's orders. Agents will not guarantee to furnish any particular size of cars, and will way-bill at full Tariff rates according to the size of the cars used.

5. Live Stock Bedding.—Bedding will be furnished by this line without charge; but when furnished by the shipper at his own expense, a reduction of 25 cents per car in the rate is authorized, way-bills to bear notation to that effect in each case, this notation to be certified to by the forwarding agent.

Transportation of Attendants in Charge of Live Stock.

The following rules will govern the passage of men in charge of Live Stock between points on the Port Arthur Route:

First. One man will be passed each way in charge of one to five car loads of Live Stock.

Second. Two men each way in charge of six to ten cars.

685 Third. Three men each way in charge of eleven or more cars, which is the maximum number that will be passed with stock for one owner.

Fourth. Return passes for men in charge of Horses or Mules to be presented within sixty days and for men in charge of other Stock within twenty days after date of contract, the return passage to be commenced within twenty-four hours after issuance of passes.

Fifth. Women not to be passed in charge of Live Stock.

Sixth. Where shipments of Live Stock are unaccompanied by attendants, agents must be careful to note on Live Stock contract "No attendant in charge." This endorsement must be made in ink under the heading of "Drover's Return Pass," provided on Live Stock contract.

Seventh. No return passes will be issued to parties who do not accompany the shipment, and agents and others are required to see that in issuing contracts, they must be filled up in ink and no names are inserted therein but those of the party or parties actually with the Stock; and the signatures of the parties whose names are thus inserted must be shown upon the contract, as a means of identification.

For return pass the agent at destination will countersign and fill up the blank on back of Live Stock contract for such of the persons as do actually return and none other, drawing pen through remaining lines. Agent will refuse to enter any name or names upon contract or return pass but those of owners or employes, without regard to passes required by number of cars.

Feeding and Watering Live Stock.

The attention of Shippers, Agents, and Conductors is called to the following Federal Statute, which prescribes and regulates the time for feeding and watering of Live Stock which is transported by railway companies:

Sec. 4386.—No Railway company within the United States whose road forms any part of a line of road over which, cattle, sheep, swine or other animals are conveyed from one State to another, or the owners or masters of steam, sailing or other vessels carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars, boats or vessels of any description for a longer period than twenty-eight consecutive
686 hours without unloading the same for rest, water and feeding for a period of at least five consecutive hours, unless prevented from so unloading by storm or other accidental causes. In esti-

mating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included, it being the intent of this section to prohibit their continuous confinement beyond the period of twenty-eight hours, except upon contingencies hereinbefore stated.

Sec. 4387.—Animals so unloaded shall be properly fed and watered during such rest by the owner or the person having the custody thereof, or in case of his default in so doing, then by the railroad company or owners or masters of boats or vessels transporting the same at the expense of the owner or the person in custody thereof; and such company, owners or masters shall in such case have a lien upon such animals for the food, care and custody furnished, and shall not be liable for any detention of such animals.

Sec. 4388.—Any company, owner or custodian of such animals, who knowingly and wilfully fails to comply with the provisions of the two preceding sections, shall, for every such failure, be liable for and forfeit and pay a penalty of not less than one hundred nor more than five hundred dollars. But when animals, are carried in cars, boats or vessels in which they can and do have proper food, water, space, and opportunity to rest, the provisions in regard to their being unloaded shall not apply.

Sec. 4389. The penalty created by the preceding sections shall be recovered by civil action in the name of the United States, in the circuit or district court of the United States, holden within the district where the violation may have been committed, or the person or corporation resides or carries on its business, and it shall be the duty of all the United States marshals, their deputies and subordinates, to prosecute all violations which come to their notice or knowledge.

Sec. 4390.—Any person or corporation entitled to a lien under section (4453) (4387), may enforce the same by a petition filed in the district court holden within the district where the food, care and custody have been furnished, or the owner or custodian of the property resides; and the court shall have power to issue all suitable process for the enforcement of such lien by sale or otherwise, and
687 to compel the payment of all costs, penalties, charges and expenses of proceedings under the provision of this and the preceding sections.

Agents must note on their way-bills for shipments of Live Stock the date and hour on which they were last fed and watered. If shipments are received from connecting lines without this information appearing on billing it must be ascertained and stated on way-bills. Conductors handling Live Stock must see that cars containing animals which have been in cars without food and water longer than permitted by statute are set out at stock pens and properly cared for.

The expense of feeding animals under these instructions must be added to the way-bill and will follow the shipments to destination and be collected from the consignee in addition to the freight.

All employes will be held personally responsible for any violation of the laws as above set forth.

Cancellation Notice.

(Effective May 18, 1903.)

Cancel the application of rates on wheat and articles taking same rates, C. L., and Corn and articles taking same rates, C. L. from Shreveport, La., Lake Charles and West Lake, La. and Beaumont, Texas, to points in Louisiana on The K. C. So. Ry. For rates from Beaumont, Tex., see Tariffs P. A. R. No. 875-A, T. & Ft. S. No. 201-B (I. C. C. No. 997), and P. A. R. 1643, T. & Ft. S. No. 636-A (I. C. C. No. 1323), or reissues.

For Rates on Ice, C. L., and L. C. L., also on Rough Rice, C. L., between points in Louisiana, see Tariff No. 274-B, or issues.

To arrive at Rates under Tariff, as amended, apply the Mileage shown in "Official List of Stations" No. 14 (I. C. C. No. 1370), or reissues.

688 *Amendment No. 10 to I. C. C. No. 841.*

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route."

Amendment No. 6 to Joint Distance Tariff.

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. and Texarkana and Ft. Smith Ry., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Ark.).

Issued June 3, 1903. Effective June 3, 1903.

Refer to above described Tariff and amend as follows:

Between Points in Louisiana on the K. C. S. Ry.

In Cents per 100 Pounds.

Distances.				Ice.	
				Carloads. Min. wt. 30,000 lbs.	L. C. L.
20	miles	and	under	4.4	10
30	"	"	over 20 miles	4.5	15
50	"	"	" 30 "	5	15
65	"	"	" 50 "	5.5	20
80	"	"	" 65 "	6	20
100	"	"	" 80 "	6.5	25
125	"	"	" 100 "	7	30
150	"	"	" 125 "	8	35
175	"	"	" 150 "	9	40
200	"	"	" 175 "	9.5	45
Over 200	miles			10	50

4,000 pounds of preservative will be allowed free with each Car Load Shipment. Less than Car Load Shipments to be carried at Gross Weight.

Stopover Privileges.—Stopovers will be allowed not oftener than three times between origin and final destination for partial unloading, at an additional charge of \$15.00 per car for each stop.

689 E. E. Smythe,
G. F. A., The K. C. S. Ry. Co.,
Kansas City, Mo.

Auth'y No. 7175, La. Com. Order No. 219.

Mailed to I. C. C. from Kansas City, Mo., June 3, 1903.

Amendment No. 9 to I. C. C. No. 841.

Oct. 7, 07, 143207 9.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith
Railway Co., "Port Arthur Route."

Amendment No. 5 to Joint Distance Tariff.

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co., and Texarkana & Ft. Smith Railway Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued May 5, 1903. Effective May 18, 1903.

Refer to Tariff, as amended, and Cancel the application of Rates on Wheat and Articles taking same rates, C. L., and Corn and Articles taking same rates, C. L., from Shreveport, La., Lake Charles and West Lake, La., and Beaumont, Texas, to points in Louisiana, on the K. C. So. Ry. For Rates from Beaumont, Tex. See Tariffs Nos. 875-A, T. & Ft. S. No. —, I. C. C. No. 997, and No. 1643, T. & Ft. S. No. 636-A, (I. C. C. No. 1323) or reissues.

Chas E. Perkins,
G. F. A., T. & Ft. S. Ry. Co.,
Texarkana, Texas.

E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority No. 7006. La. Com. Auth'y No. 274.

Mailed to I. C. C. from Kansas City, Mo., May 5, 1903.

(150.)

690

Amendment No. 8 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with The Arkansas & Louisiana Railway Co.

Amendment No. 4 to Joint Distance Tariff.

T. & F. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Railway Co. and Texarkana & Ft. Smith Railway Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas.

Issued July 29, 1902. Effective June 27, 1902.

Refer to the above described Tariff and amend as follows:

Between Points in Louisiana on the K. C. So. Ry.	Minimum weight of hay. Car loads.
Cars 34 Ft. in Length and under.....	17,000 Pounds.
Cars over 34 Ft. in length	20,000 Pounds.

Chas. E. Perkins,
G. F. A., T. & F. S. Ry. Co.,
Texarkana, Tex.
E. E. Smythe,
G. F. A., The K. C. S. Ry. Co.,
Kansas City, Mo.

Auth'y No. 6252 La. Comm. Auth'y No. 1600.
Mailed to I. C. C. from Kansas City, Mo., July 29, 1902.

Am'd't 7 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry. Co.

691

Amendment No. 3 to Joint Distance Tariff.

T. & F. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Railway Co. and Texarkana & Ft. Smith Railway Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued June 17, 1902. Effective June 17, 1902.

Refer to the above described Tariff and amend as follows:

Between Points in Louisiana on the K. C. So. Ry. Distances.					In cents per 100 pounds. Rough rice, car loads.
5	Miles	and	under	.....	4
10	"	"	over	5 miles	5
15	"	"	"	10 "	5½
20	"	"	"	15 "	5½
25	"	"	"	20 "	6
30	"	"	"	25 "	6
35	"	"	"	30 "	6½
40	"	"	"	35 "	6½
45	"	"	"	40 "	7
50	"	"	"	45 "	7
55	"	"	"	50 "	7½
60	"	"	"	55 "	7½
65	"	"	"	60 "	8
70	"	"	"	65 "	8
75	"	"	"	70 "	8
80	"	"	"	75 "	8½
85	"	"	"	80 "	8½
90	"	"	"	85 "	8½
95	"	"	"	90 "	9
100	"	"	"	95 "	9
110	"	"	"	100 "	9¼
692					
120	"	"	"	110 "	10
130	"	"	"	120 "	10½
140	"	"	"	130 "	11
150	"	"	"	140 "	11¼
160	"	"	"	150 "	12
170	"	"	"	160 "	12½
180	"	"	"	170 "	13
190	"	"	"	180 "	13½
200	"	"	"	190 "	14
Over 200 Miles					14

Chas. E. Perkins,
G. F. A. T. & F. S. Ry. Co.,
Texarkana, Tex.
E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Auth'y No. 6136.

Mailed to I. C. C. from Kansas City, Mo. June 17, 1902.

Am'd't No. 6 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Ry. Co.

Amendment No. 2 to Joint Distance Tariff.

T. & F. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Railway Co. and Texarkana & Ft. Smith Railway Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued March 28th, 1902. Effective April 3, 1902.

Maximum Rates.

Class rates will be the maximum to be charged on commodities named in this Tariff.

693 Chas. E. Perkins,
G. F. A., T. & F. S. Ry. Co.,
Texarkana, Tex.

E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Auth'y No. 5928.

Mailed to I. S. C. C. from K. C. Mo. March 28th, 1902.

(575.)

Amendment No. 5 (Cancels Previous Amendments) to I. C. C. No. 841.

Port Arthur Route.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co. in Connection with Texas, Arkansas & Louisiana Ry. Co.

Amendment No. 1 to Joint Distance Tariff.

T. & Ft. S. No. 180-B. Port Arthur Route No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co. and Texarkana & Fort Smith Ry. Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of, and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Subject to Western Classification with exceptions applicable to Arkansas (as per Rate Circular No. 14-C. Arkansas Classification

exception I. C. C. No. 9), Texas and Louisiana Traffic (as per Rate Circular 19-E, S. W. T. C., I. C. C. 213).

Issued October 15, 1901. Effective as noted.

Chas. E. Perkins,

G. F. A. T. & Ft. S. Ry. Co.;

A. G. F. A., The K. C. So. Ry. Co.,
Texarkana, Tex.

B. F. Ellington,

G. M. T. A. & L. Ry.,
Atlanta, Tex.

W. C. Dennis,

A. G. F. A. The K. C. So. Ry. Co.,
Kansas City, Mo.

J. A. Hanley,

F. T. M., The K. C. So. Ry. Co.,
Kansas City, Mo.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Authority 5371.

694 Mailed to I. S. C. C. from Kansas City, Mo., Oct. 15, 1901.

C. E. B. Ptg. Co.—2500.

*Amendment No. 1 to Joint Distance Tariff, "Port Arthur Route,"
No. 822-A.*

Refer to above numbered Tariff and amend as follows:

Application of Rates.

(Effective Oct. 21, 1901.)

Cancel application of rates, as shown in Tariff, and substitute the following: "The maxima rates between points covered by this Tariff shall be the higher Kansas City rate prevailing at point of origin or destination as per Tariffs 363-B, (I. C. C. 725), and 400-A, (I. C. C. 534), or reissues except where the higher New Orleans rate at the same points, as per Tariff 453-B, (I. C. C. 928) or reissues, is less in which case the latter will apply as maxima:

Example: First-class rate from Singer, La., to Ashdown, Ark.:

Distance 236.8 miles, Distance Tariff rate.....	\$1.12 per 100 lbs.
1st Class Kansas City to Ashdown	\$1.00 per 100 lbs.
1st class Kansas City to Singer.....	\$1.10 per 100 lbs.
The higher Kansas City rate	\$1.10 per 100 lbs.
1st class New Orleans to Ashdown	\$1.20 per 100 lbs.
1st class New Orleans to Singer .....	.80 per 100 lbs.
The higher New Orleans rate	\$1.20 per 100 lbs.

Result, the higher Kansas City rate \$1.10 per 100 lbs., should apply.

It must be understood that rates to or from Ft. Smith, Ark., Texarkana, Tex., or Shreveport, La., are terminal rates and cannot be applied as maxima.

Texas, Arkansas & Louisiana Railway.

(Effective Sep. 27, 1900. Reissue.)

Cancel rates, named in Tariff between points on the Port Arthur Route and Queen City, Tex., account latter point having been discontinued by the T. A. & L. R. R.

Minimum Weight of Hay, Car Loads.

(Effective Feb. 27, 1901. Reissue.)

The following Minimum Weights will govern on Hay C. L.:

	When loaded in cars 30 feet and under in length.	16,000 lbs.
695	When loaded in cars over 30 feet to and including 32 feet	18,000 lbs.
	When loaded in cars over 32 feet to and including 34 feet	19,000 lbs.
	When loaded in cars over 34 feet to and including 36 feet	20,000 lbs.
	When loaded in cars over 36 feet in length.....	22,000 lbs.

Minimum Charge.

(Effective Dec. 22, 1900. Reissue.)

All shipments Between Points in Louisiana on the K. C. So. Ry. will be charged at actual weight and rate with a minimum charge of 25 cents for any single shipment, except that on shipments to and from points in Louisiana on connecting lines, the minimum charge for this Company will be 20 cents for any single shipment.

Am'd't No. 4, to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Railway Co.

Advance Notice No. 4.

Amendment No. 1 to Joint Distance Tariff.

T. & F. S. Ry. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co. and Texarkana & Ft. Smith Ry. Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas.).

Issued March 19th, 1901. Effective Dec. 22d, 1900.

Refer to above numbered Tariff and amend as follows:

529

Minimum Charge.

All shipments between points in Louisiana on the K. C. So. Ry. will be charged at actual weight and rate with a minimum charge of 25 cents for any single shipment, except that on shipments to and from points in Louisiana on connecting lines, the minimum charge for this company will be 20 cents for any single shipment.

696 This Advance Notice will be cancelled upon the issuance of Amendment No. 1 or reissue of Tariff.

Attach this to Tariff and make it part of same.

N. L. Scovell,

G. F. A., T. & F. S. Ry. Co.,
Texarkana, Tex.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Mailed to I. S. C. C. from K. C. March 19th, 1901.

La. R. R. Com. Order No. 139.

(250.)

Am'd't No. 3 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Railway Co.

Advance Notice No. 3.

Amendment No. 1 to Joint Distance Tariff.

T. & Ft. S. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co. and Texarkana & Fort Smith Ry. Co. South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas).

Issued February 27th, 1901. Effective Dec. 22d, 1900.

Refer to above numbered Tariff and amend as follows:

Minimum Charge.

All shipments between points in Louisiana on the K. C. So. Ry. will be charged for at actual weight and rate with a minimum charge of 25 cents for any single shipment.

This Advance Notice will be cancelled upon the issuance of Amendment No. 1 or reissue of Tariff.

Attach this to Tariff and make it part of same.

M. L. Scovell,

G. F. A., T. & S. Ry. Co.,
Texarkana, Texas.

E. E. Smythe,

G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

607 Auth'y No. 4493.
Mailed to I. S. C. C. from K. C. Feb. 27th, 1901.

(250.)

Am'd't No. 2 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Railway Co.

Advance Notice No. 2.

Amendment No. 1 to Joint Distance Tariff.

T. & F. S. Ry. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co. and Texarkana & Fort Smith Ry. Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas.).

Issued Feb. 22, 1901. Effective Feb. 27th, 1901.

Refer to the above described Tariff and amend as follows:

Minimum Weight on Hay, Car Loads.

The following Minimum Weights will govern on Hay, C. L.:

When loaded in cars 30 ft. and under in length.....	16,000 lbs.
" " " " over 30 ft. to and including 32 ft.	18,000 "
" " " " " 32 " " " " " 34 "	19,000 "
" " " " " 34 " " " " " 36 "	20,000 "
" " " " " 36 ft. in length.....	22,000 "

This Advance Notice will be cancelled upon the issuance of Amendment No. 1 or reissue of Tariff.

Attach this to Tariff and make it part of same.

M. L. Scovell,
G. F. A., T. & F. S. Ry. Co.,
Texarkana, Tex.
E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Auth'y No. 4463.
Mailed to I. S. C. C. from K. C. Feb. 22, 1901.

(250.)

698

Am'd't No. 1 to I. C. C. No. 841.

The Kansas City Southern Railway Co., Texarkana & Ft. Smith Railway Co., "Port Arthur Route," in Connection with Texas, Arkansas & Louisiana Railway Co.

Advance Notice No. 1.

Amendment No. 1 to Joint Distance Tariff.

T. & Ft. S. Ry. No. 180-B. "P. A. R." No. 822-A.

Applying Between All Points on the Kansas City Southern Ry. Co. and Texarkana & Fort Smith Ry. Co., South of Noel, Mo. (Except Texas Local Traffic); also Between Any Point North of and Any Point South of Noel, Mo. (Except Between Points within the State of Arkansas.).

Issued Sept. 27th, 1900. Effective Sept. 27th, 1900.

Refer to the above described Tariff and cancel rates named therein between points on Port Arthur Route and Queen City, Tex. account that station having been discontinued by T. A. & L. R. R.

This Advance Notice will be cancelled upon the issuance of Amendment No. 1 or reissue of Tariff.

Attach this to Tariff and make it part of same.

M. L. Scovell,
G. F. A., T. & F. S. Ry. Co.,
Texarkana, Tex.

E. E. Smythe,
G. F. A., The K. C. So. Ry. Co.,
Kansas City, Mo.

Auth'y No. 3837.

Mailed to I. S. C. C. from K. C. Sept. 27th, 1900.

(200.)

ALPHABETICAL LIST OF POINTS OF DESTINATION.

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Abneys. "		1590			Chaplin. "	129			
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1920.

T. & N. O. R. R. Co. et al.

SABINE TRAM Co.

From Jefferson.

Names of Principals—T. & N. O. R. R. Co. T. & Ft. S. Ry. Co.

Name of Sureties—U. S. F. & G. Co.

Record filed May 12, 1908.

How decided: Reformed and Affirmed.

Disposed of May 27, 1909.

Opinion by Reese, J.

Filing Record	50
Docketing Cause	50
Appearances	1.00
Filing Briefs	1.00
Filing and Entering Motion for Rehearing	35
Filing and Ent. Motion to Reform Findings	35
Filing & Ent. Motion to postpone (agreed) (2)	70
Orders	5.00
Notices	7.50
Precepts (4)	4.00
Filing Extra Papers	3.40
Making Cert. Copy Motion for Rehearing	11.40
Making Cert. Copy Motion to reform findings	7.20
Continuance .....	.20
Judgment	1.00
Filing Opinion .....	.10
Taxing Costs .....	.50
Certified Copy Bill of Costs .....	.75
Mandate	1.50
Recording	14.00
Clerk's Cost at Austin—Supreme Court	8.05
Sheriff's Fees—Bowie (Constable), 1.00; Harris (Con- stable), 1.00; Jefferson, 2.00	4.00
Entering Orders made by Supreme Court .....	.50
Transcript on App. for Writ of Error (State)	1.50
Express Charges .....	.70
Transcript to U. S. Supreme Court	356.50
Total amount due	\$432.20

727 I, H. L. Garrett, Clerk of the Court of Civil Appeals for the First Supreme Judicial District of the State of Texas, at Galveston, Texas, do hereby certify that the foregoing is a true and correct copy of the Transcript and Statement of Facts, filed herein on May 12, 1908, and of all proceedings had and papers filed herein since said date, with the exception of briefs and arguments, and with the exception of the Application to the Supreme Court of Texas for Writ of Error to this Court, in cause No. 4920, Texas and New

Orleans Railroad Company, et al. vs. Sabine Train Company, as appear of record and on file in my office.

I further certify that said Application to the Supreme Court of Texas for Writ of Error to this Court was filed in this Court on July 23, 1909, and that it was promptly transmitted to the Clerk of the Supreme Court of Texas, in whose custody it remains under the laws regulating Appellate Court Procedure in Texas.

I further certify that I have attached hereto, at request of Plaintiffs in Error, a Copy of said Application for Writ of Error and of Motion for Rehearing upon Refusal thereof, duly certified by the Clerk of the Supreme Court of Texas.

To certify which, I have hereunto set my hand and caused the Seal of Court to be affixed, at City of Galveston, Texas, this June 21, 1910.

[Seal Court of Civil Appeals of the State of Texas.]

H. L. GARRETT,
*Clerk Court of Civil Appeals, First Supreme
Judicial District of Texas, at Galveston, Texas.*

728

In the Supreme Court of Texas.

App. No. 6504.

No. 4920.

TEXAS & NEW ORLEANS RAILROAD COMPANY, TEXARKANA & FT.
SMITH RAILWAY COMPANY, Plaintiffs in Error,
versus
SABINE TRAIN COMPANY, Defendant in Error.

Petition for Writ of Error to the Court of Civil Appeals for the First
Supreme Judicial District, at Galveston.

By Glass, Estes & King, Attorneys for Texarkana & Ft. Smith
Railway Company.

Parker, Hefner & Orgain and Baker, Botts, Parker & Garwood, at-
torneys for Texas & New Orleans Railroad Company.

Filed in Supreme Court Aug. 17, 1909. — Connerly, Clerk.

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In the Supreme Court of Texas.

No. —.

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA &
FT. SMITH RAILWAY COMPANY, Plaintiffs in Error,
versus
SABINE TRAM COMPANY, Defendant in Error.

Application for Writ of Error.

To the Honorable Supreme Court of the State of Texas:

Your petitioners, Texas & New Orleans Railroad Company and Texarkana & Ft. Smith Railway Company, plaintiffs in error, complaining of Sabine Tram Company, defendant in error, represent:

I.

That petitioner Texas & New Orleans Railroad Company is a railroad corporation created by and under the laws of the State of Texas, with its principal office and place of business in Houston, Harris County, Texas; that petitioner Texarkana & Ft. Smith Railway Company is a railroad corporation created by and under the laws of the State of Texas, with its principal office and place of business in the city of Texarkana, in Bowie County, Texas; that
730 Sabine Tram Company, defendant in error, is a private corporation created under the laws of the State of Texas, with its principal office and place of business at Beaumont, in Jefferson County, Texas, and that defendant in error is represented herein by its attorneys, Messrs. Greer, Minor & Miller, who reside in the city of Beaumont, in Jefferson County, Texas.

II.

That heretofore, to wit, on the 18th day of February, 1907, said Sabine Tram Company, defendant in error, filed suit in the District Court of Jefferson County against your petitioners jointly, seeking to recover from petitioners the sum of \$1,788.33 alleged to be due for overcharges on thirty-three cars of lumber shipped by defendant in error to its own order notify W. A. Powell Company, Ltd., to the station of Sabine, said shipments moving from Ruliff, in the State of Texas, to Beaumont, Jefferson County, Texas, over the line of the Texarkana & Ft. Smith Railway, and from Beaumont to Sabine over the line of the Texas & New Orleans Railroad Company, it being alleged that said shipments weighed in the aggregate 2,104,000 pounds; that the legal rate applicable thereto, under the orders of the Railroad Commission of Texas, was 6½ cents per hundred pounds, and that defendants wrongfully collected thereon, over the protest of said Sabine Tram Company, 15 cents per hundred pounds, amounting to an illegal and excessive charge of 8½ cents per hundred pounds, or \$1,788.33.

Recovery was also asked for penalties for extortion in the sum of \$16,500.00; that is to say, the maximum penalty of \$500.00 allowed by Art. 4575, Revised Statutes of Texas, for each of the thirty-three cars transported.

731 Your petitioners defended upon the ground that the shipments involved were foreign commerce shipped from a point within the United States, and carried from such point in continuous transit through Sabine, a port of trans-shipment to foreign countries, and, therefore, not subject to the rates, rules or regulations of the Railroad Commission of Texas; that the legal rate applicable thereto was a rate of 15 cents per hundred pounds, which had theretofore been established by petitioners and regularly filed with the Interstate Commerce Commission, and duly published in accordance with the Act to Regulate Commerce of the Congress of the United States of date February 4, 1887, and acts amendatory thereof, and that, therefore, no recovery could be had by complainants either for such alleged overcharge or for penalties. It was further contended by petitioners that, conceding the shipments involved to be domestic or intrastate commerce, and, as such, subject to the rates, rules and regulations of the Railroad Commission of Texas, that under said Art. 4575 only one penalty of not less than \$125.00 nor more than \$500.00 could be recovered, it being further contended that, conceding such shipments to be intrastate commerce, the correct State rate under the orders of the Railroad Commission of Texas was not 6½ cents per hundred pounds, as alleged by defendant in error, but 12½ cents per hundred pounds.

Upon the trial of the cause, the District Court of Jefferson County charged the jury that the shipments involved constituted intrastate commerce subject to the rates prescribed by the Railroad Commission of Texas; that the legal rate applicable thereto under the orders of said Commission was 6½ cents per hundred pounds, and

732 that your petitioners were liable to defendant in error in the sum of \$1,788.33 overcharges, for which sum the jury was directed to return a verdict in favor of defendant in error, with interest at the rate of 6 per cent. per annum from January 1, 1907. The court further charged the jury that the freight charges collected having been paid in five separate payments, there were five distinct acts of extortion, for which defendant in error was entitled to recover penalties in the sum of not less than \$625.00 nor more than \$2,500.00; that is to say, not less than \$125.00 nor more than \$500.00 for each act.

In accordance with the instruction of the court, the jury rendered its verdict in favor of defendant in error, the Sabine Tram Company, against your petitioners, for \$1,788.00, with interest at 6 per cent. per annum from January 1, 1907, and for the sum of \$1,785.00 penalties, and judgment was entered in accordance therewith.

From this judgment, an appeal was perfected to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, and on May 31, 1909, said Court of Civil Appeals affirmed the judgment of the trial court for the recovery of said

sum of \$1,788, alleged overcharges, and reformed the judgment as to penalties, finding that inasmuch as there were twenty-four separate shipments, defendant in error was entitled to recover a penalty for each shipment, and said defendant in error having, by cross-assignment, complained of the action of the trial court in finding that it was entitled to only five penalties, and consented that if the Court of Civil Appeals should hold that it was entitled to recover either a penalty for each car or for each shipment, that said court could render judgment for the lowest penalty of \$125.00.

733 Said court reformed the judgment in that particular, and rendered its judgment for penalties in the sum of \$125.00 for each of twenty-four shipments, aggregating the sum of \$3,000.00. Within fifteen days thereafter, your petitioners filed their motion for rehearing, which was by the court overruled on June 24, 1909, the opinion thereon being filed June 29, 1909.

III.

Your petitioners represent that said Court of Civil Appeals, in its decision and judgment rendered in this cause, committed grievous and material errors against your petitioners, and greatly to their damage, and they hereby apply to this Honorable Court for writ of error, that said decision and judgment may be revised and said errors corrected, and, as a basis for this application, petitioners present the following specifications of error:

First Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain appellants' third assignment of error, which is as follows:

"The court erred in overruling and failing to sustain special exception contained in paragraph four of the amended original answer of the defendant, the Texas & New Orleans Railroad Company, and the special exception of the defendant Texarkana & Ft. Smith Railway Company, to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railroad Commission of Texas, does not permit the accumulation of penalties thereunder, and that, under the allegations in the plaintiff's petition, it was entitled to

734 "recover only one penalty of not less than \$125.00 nor more than \$500.00, and that it could only recover one penalty for all alleged overcharges up to the time of the filing of its suit."

Second Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain appellants' fourth assignment of error, which is as follows:

"The court erred in failing and refusing to give special charge No. 2, asked by defendants, to the effect that plaintiff in no event can recover more than one penalty of not less than \$125.00 nor more than \$500.00 in this cause."

Third Specification of Error.

The Court of Appeals erred in overruling and failing to sustain appellants' sixth assignment of error, which is as follows:

"The court erred in holding that plaintiff, if entitled to recover actual damages as for an overcharge, was entitled to recover penalties in the sum of not less than \$625.00 nor more than \$2,500.00, and in so charging the jury, for the reason that the uncontradicted testimony herein, and the law under which plaintiff seeks to recover does not permit the recovery of more than one penalty of not less than \$125.00 nor more than \$500.00 in any event."

Fourth Specification of Error.

The Court of Civil Appeals erred in sustaining the third cross-assignment of error made by Sabine Tram Company, defendant in error, and erred in its judgment herein in reforming and affirming the judgment of the District Court of Jefferson County, and 735 entering judgment against petitioners for twenty-four penalties of \$125.00 each, aggregating \$3,000.00, for the reason that, under the law, conceding the traffic moved to be domestic or intrastate commerce, defendant in error was entitled to recover only one penalty of not less than \$125.00 nor more than \$500.00; and there having been but five collections of alleged overcharges, in no event could there be more than five penalties recovered, as found by the trial court, and for which judgment was entered.

Statement under Four Preceding Specifications of Error.

Defendant in error, in its petition, alleges that the lumber in question, all of which was consigned from Ruliff, Texas, to Sabine Texas, to the order of the shipper, Sabine Tram Company, notify W. A. Powell Company, Ltd., over the lines of plaintiffs in error, and to all of which was applied the interstate rate of 15 cents per hundred pounds, and to all of which defendant in error claims the State rate of 6½ cents per hundred pounds was applicable, was transported in thirty-three cars, on twenty-six different days, and demand is made for the maximum penalty of \$500.00 on each of said thirty-three cars, or, in the alternative, for the maximum penalty for twenty-six separate and distinct shipments. (Tr., pp. 8-10.) To this allegation and prayer, petitioners excepted, upon the ground that Article 4575, R. S., did not permit the accumulation of penalties, but allowed the recovery of only one penalty up to the time of the institution of the suit. This exception was overruled. (Tr., pp. 25-26.) Upon the trial, petitioners requested the court to instruct the jury that plaintiff could in no

event recover more than one penalty of not less than \$125.00 736 nor more than \$500.00, which instruction was refused. (Tr., p. 82.) It was shown upon the trial that the thirty-three cars were moved on twenty-four different days (S. F., p. 92), and that the pay-

ment of the entire freight charges on all the shipments moving under the fifteen-cent rate was made in five separate payments—on October 17, October 18, October 31, November 12 and November 17, 1906. (S. F., pp. 92-93.)

The trial court charged the jury that defendants were liable to penalties in the sum of not less than \$625.00 nor more than \$2,500.00. (Tr., p. 80.) The jury returned a verdict against petitioners for penalties in the sum of \$1,785.00. The defendant in error, Sabine Tram Company, having filed a cross-assignment of error, complained of the action of the trial court in allowing a recovery for only five penalties, asked the Court of Civil Appeals to hold that it was entitled to recover a penalty for each separate shipment, consenting, in the event the court should so hold, to an award of the lowest penalty in each case, in order that a reversal might not be necessary. The court sustained this cross-assignment, and reformed and affirmed the judgment of the court below, giving judgment for twenty-four penalties at \$125.00 each, aggregating \$3,000.00.

Authorities.

Article 4573, R. S.

Article 4575, R. S.

Gulledge v. M. P. Ry. Co., 3 Tex. Civ. App. cases (White and Wilson), Section 168.

Griffin v. Interurban Street Ry. Co., 179 N. Y., 438.

Fisher v. N. Y. C. Ry. Co., 46 N. Y., 444.

Porter v. Dawson Bridge Co., 157 Pa. St. Rep., 367; s. c., 27 Atl., 730.

737 Parks v. M. C. & St. L. Ry. Co., 18 Am. and Eng. R. R. Cases, 404; s. c., 13 Lea, 1.

P. C. & St. L. Ry. Co. v. Moore, 33 Ohio, 384.

McLaughlin v. N. Y. C. Ry. Co., 92 N. Y. S., 653.

McLean v. Interurban Ry. Co., 92 N. Y. S., 77.

In re Penalty Cases, 92 N. Y. S., 322.

U. S. v. Stearns Salt & Lumber Co., 165 Fed. Rep., 735.

U. S. v. Standard Oil Co., 164 Fed. Rep., 376.

M. K. & T. v. State, 97 S. W., 724.

Railway v. Sanford & Morris, 103 S. W., 432.

Article 4573, Revised Statutes, defines extortion as follows:

"If any railroad company subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any person, company, firm or corporation, a greater rate, charge, or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad or any line operated by it, or for receiving, forwarding, delivering or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer

"shall be deemed guilty of extortion,, and shall forfeit and pay to the State of Texas a sum not less than \$100.00, nor more than \$500.00."

Article 4575, under which this recovery is had, is as follows:

"In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter provided or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad

738 "shall be liable to the person or persons, firm or corporation injured thereby, for the damages sustained in consequence

"of such violation, and in case said railroad company shall be guilty of extortion or discrimination, as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than \$125 nor more than \$500, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to an action for such penalty that such overcharge was unintentional, and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the State of a penalty for such violation."

The court will observe that the language of the statute, in addition to the actual damages suffered in making an overcharge, provides that a penalty of not less than \$125.00 nor more than \$500.00 may be recovered. It does not provide that he should recover a penalty for each separate act of shipment. The statute gives to the shipper a cause of action for whatever amount he has paid over and above the rate prescribed by the Commission, and after creating the cause of action, declares that suit may be brought in any court of competent jurisdiction, and in addition to the actual damages, the shipper in that suit may recover a penalty of not less than \$125.00 nor more than \$500.00. The act of extortion in this case consisted in the charging of a higher rate than that fixed by the Railroad Commission. It is essentially one complete transaction. The entire movement is under one contract from the same consignor to the same consignee, under the same rate. The authorities quoted are directly in point, and amply sustain the proposition that, unless the penal act, strictly construed, specifically and clearly demands the imposition of a penalty for each shipment, the accumulation of such penalties cannot be tolerated. They are clear and decisive upon the proposition that the shipper cannot stand by and forbear to sue, and permit the accumulation of penalties until confiscation results, but that up to the time of his suit he can recover but one penalty, and, after the recovery of that penalty, if subsequent acts of extortion accrue, he may again sue. The trial court held that, inasmuch as there were five distinct payments, there could have been but five acts of extortion, and limited the recovery to five penalties. The Court of Civil Appeals, however, takes the position that, because the thirty three cars moved on twenty-four separate days, there should be twenty-four penalties. There is, of course, no

authority in the statute for either holding. It will be interesting, however, to follow the logic of the Court of Civil Appeals to its legitimate conclusion. If we are permitted to travel outside of the statute to construct a penalty for each day's shipment, why should not a penalty be charged for each separate car, and, therefore, permit a recovery for thirty-three penalties, instead of twenty-four, as permitted by the Court of Civil Appeals, and five, as permitted by the trial court? How does the Court of Civil Appeals get its authority to make a time division on the question of penalties? It would be more logical to say that because the rate charged was 15 cents per hundred pounds, and the legal rate, as found by the trial court, was 8½ cents per hundred pounds, and the entire number of pounds shipped was 2,104,000 pounds; that there should be as many penalties as there are hundred pounds; that is to say, 21,040 penalties of not less than \$125.00 nor more than \$500.00 each. Just why

740 the court should assess twenty-four penalties on these thirty-three cars which were shipped on thirty separate bills of lading, we confess our inability to understand. The charges were assessed on each hundred pounds covered by the thirty separate bills of lading, and it would be just as logical, and equally beyond the terms of the statute, to assess thirty penalties under each separate bill of lading, or thirty-three penalties, because the shipment was made in thirty-three cars, or 21,040 penalties for that number of hundred-weight, as it is to select twenty-four penalties for the number of days upon which the several shipments were made. The court seeks to justify this accumulation of penalties by a reference to Article 4581, R. S., which is as follows:

"This law shall not have the effect to release or waive any right of action by the State or any person for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this State, and all penalties accruing under this chapter shall be cumulative of each other, and a suit for, or recovery of, one shall not be a bar to the recovery of any other penalty, and all laws or parts of laws in conflict with this chapter are repealed."

A casual inspection of this article and comparison with others of the same chapter shows that the Court of Civil Appeals has radically misconstrued its meaning and its application. The chapter provides penalties for extortion recoverable by the State, and also recoverable by the party injured. It provides penalties for discrimination, separate and apart from those for extortion. It provides penalties for disobedience of the orders of the Commission. Article 4581 permits penalties for these different offenses to be cumulative, and provides that suit for the one shall not be a bar to a suit for the

741 other. Thus a suit by the State, under Article 4573, will not bar a suit by the individual for an extortion. The same act may be a violation of the extortion statute as regards an individual, and if at the same time the different rule discriminates in favor of another shipper, he may be guilty of discrimination under Article 4574, whereby a penalty accrues both to the State and to the individual. Prosecution, then, under the extortion statute, will not bar a prosecution under the discrimination statute, either by the State

or by an individual. This is the clear meaning of the statute quoted by the Court of Civil Appeals as justifying its judgment.

Article 4575 is not materially different from Articles 4257 and 4258 of the Revised Statutes of 1879, and construing that statute, the Court of Civil Appeals, in the case of *Gulledge v. Mo. Pac. R'y Co.*, 3 Tex. Civ. App. Cases (White and Wilson), Section 168, in discussing the case of *Fisher v. Railway*, 46 N. Y., 644, said:

"This decision is based upon a statute substantially the same as ours. After reviewing the authorities bearing upon the question, Justice Grover, delivering the opinion of the court, says: 'My conclusion is, that but one penalty can be recovered upon the statute under consideration for all acts committed prior to the commencement of the action. If after this it is again violated, another may be recovered in another action commenced thereafter, and so, as long as the violations continue. This will not only tend to put a stop at once to extortion when it is committed knowingly by the defendant, but where it is done under a mistake, as to its rights, will give it notice that its right to charge the amount claimed is challenged, and will induce a cautious examination of the question, and an abandonment of the claim before a ruinous amount of penalties has been incurred.' This decision

742 "was rendered on December 12, 1871, and is the leading case upon the question before us. Mr. Rorer, in his work on

"Railroads, citing it, says: 'Such action for the penalty is not given as a satisfaction to the party injured, but is given as a punishment for the misconduct of the company in violating the law, and to compensate the party for the expense of the suit, hence a recovery can be had but for one penalty, by the same party, for illegal exactions, up to the time of commencing the action, however often the illegal action may have been repeated, unless the statute otherwise provides. The intention of the law is to prevent the wrong act of taking excessive rates, and with that intent requires, though not so expressed, that each penalty incurred shall be sued for as it occurs, so that if the act be an oversight, it may thereafter be guarded against by the carrier, and if, from a misconstruction of the law, the carrier may be undeceived by a judgment going against him, and may cease to violate the statute. The object of the statute is not so much to vindicate the individual right as the public law.' Mr. Wait, in his work on Actions and Defenses, quotes the doctrines of the decision without questioning its correctness."

This decision of our own court, conforming as it does to the opinion of the Court of Civil Appeals in the cases of *M., K. & T. Railway v. State*, 97 S. W., 724, and of the Court of Civil Appeals, *Railway v. Sanford & Morris*, 103 S. W., 432, is in strict accord with the authorities elsewhere, and especially the Supreme Court of Tennessee in *Parks v. N. C. St. L. R'y Co.*, 13 Lea, p. 1, from which we make the following excerpt:

"The intent of the legislature in the statute before us was to secure certain benefits to passengers on the railroad trains. It was, of course, never intended that a penalty should be incurred, if it

fact there were no passengers on the train, or in a car of the train
 "in which there was a default. And a failure to call a sta-
 743 "tion at which no passenger intended to get off, or did in fact
 "get off, could do no harm, and would be, at most, only a
 "technical breach of the law. If the statute be construed literally,
 "or as punitive, there would be a penalty even in such cases. Penal-
 "ties would also be incurred by acts of inadvertence or omissions of
 "negligence, although no person was aggrieved thereby. And if
 "default gave a right of action, and might be sued upon at any
 "time, the purpose of the legislature would be lost sight of, and the
 "act be perverted and made punitive, instead of remedial. The
 "common law forbids the infliction of penalties or punishment
 "more than once, although guilty of several distinct offenses. By
 "that law, and it was so construed in this State, a conviction, judg-
 "ment and execution for a felony not capital were a bar to all other
 "indictments for felonies not capital committed previously. And
 "the courts have been always opposed to the enforcement of penal-
 "ties except to the extent necessary to secure the manifest object of
 "their infliction. For this reason, as we have seen, they are agreed
 "in construing penal statutes strictly.

"The act before us gives the forfeiture upon the failure of any
 "railroad company to comply with its provisions 'during any trip
 "of the passenger cars.' Under the rules of construction adopted
 "by the courts, there would be only one penalty for each trip. The
 "statute does not in so many words give the right of action to a
 "common informer, and the argument is strongly persuasive, espe-
 "cially in view of the amount of the penalty, that the right of ac-
 "tion is given only to a passenger aggrieved by the default. But if
 "it be conceded that a qui tam action might be brought by anyone,
 "the statute does not say that there shall be a penalty for 'each and
 "every offense.' In the absence of these words, it seems to be
 "settled that only one recovery can be had for acts or omissions in
 "violation of the statute, prior to the commencement of the suit.
 "The reason is, that it is the action which will bring the default to
 "the attention of the corporation or party, and secure a compliance
 "with the law. And it is the performance of the duties imposed

"which inures to the benefit of the passengers in whose be-
 744 "half the act was passed. A different construction would
 "contravene the legislative intent, leave an opening for the
 "perversion of the act, and make a statute punitive which was in-
 "tended to be remedial.

"Accordingly, under a statute giving a penalty against any per-
 "son employing another to act as pilot who has no license, it was
 "held that there could be only one recovery against the defendant,
 "although he had employed an unlicensed pilot for several ships.
 "Sturgis v. Spofford, 45 N. Y., 448. The same ruling was made
 "where a penalty of \$50.00 was given against any railroad company
 "for taking more than a fixed rate of fare. Fisher v. Railway Com-
 "pany, 46 N. Y., 644. "The omission from the statute of the words
 "for each and every offense," say the court in that case, 'shows
 "clearly that the legislature did not intend to open the door to a

"practice adopted in a case originating in another part of the
 "State, now under advisement in this court, of opening a book
 "account of penalties accrued, and delaying suit for a year, when
 "such penalties amounted to between \$20,000.00 and \$30,000.00.
 "A construction permitting this would defeat the intention of the
 "legislature, which was to suppress the extortion by prompt prose-
 "cution, by enabling parties to forbear suing until the aggregate
 "penalties amounted to a large sum, and induce others to do as one
 "of plaintiffs in one of the cases now in judgment *ment* was honest
 "enough to testify he did; that was to abandon other business and
 "spend his time for a considerable period in riding back and forth
 "from Tonawanda to Buffalo for the purpose of earning penalties."
 "The plaintiff in this suit has brought us precisely the case pre-
 "sented to the Court of Errors and Appeals of New York under a
 "similar statute. The decision of that eminent tribunal commends
 "itself to our judgment and sense of justice. To allow a person to
 "open up a book account of penalties at an insignificant way sta-
 "tion, and run up a charge of \$24,000 for the failure of the con-
 "ductor to announce the station, or the length of stay, of which no
 "passenger has complained, would shock the conscience,
 745 "pervert the intention of the legislature, and turn a remedial
 "into a highly punitive statute. It would be a literal con-
 "struction of the words of the statute which would recall the similar
 "construction by a somewhat famous judicial tribunal of the middle
 "ages of a law making it a capital offense to shed blood in the street,
 "whereby an unfortunate leech was condemned to the gallows for
 "bleeding his apoplectic patient on the sidewalk where he had
 "dropped down. If the legislature had, in the act before us, in so
 "many words authorized what the plaintiff has done without any
 "notice to the company, it would be difficult to sustain the consti-
 "tutionality of the statute, for the effect would be the imposition of
 "an excessive fine. But the legislature had no such intention, and
 "we shall not press the language used so as to do indirectly what
 "could not perhaps have been done directly. The statute, both
 "upon reason and authority, admits of a different construction. We
 "are of the opinion, therefore, that only one penalty can be recov-
 "ered up to the bringing of the suit."

The other authorities quoted are equally in point. As bearing
 upon this question, we call the attention of the court to the case of
 United States v. Stearns Salt & Lumber Company, 165 Fed. Rep.,
 735, where the defendant pleaded guilty to an indictment containing
 twenty counts, each charging the unlawful receipt of a rebate upon
 a shipment of a carload of lumber from a point in Michigan to a
 point in Ohio. Each count charged that the lawful freight rate was
 11 cents, and that defendant, knowing such fact, delivered the lum-
 ber to the railway company for transportation to the consignee; that
 the lawful rate of 11 cents was charged to, and collected from, the
 consignee, in the form of the freight rate of 7 cents, plus a fictitious
 advance charge of 4 cents; that later, and at the end of the
 746 month, the fictitious advance charge of 4 cents was returned
 to the defendant as a rebate, and that thereby defendant ac-

accepted a concession, rebate and discrimination of 4 cents per hundred pounds. It appears that while there were twenty shipments, and were only six payments, and the court, therefore held that conviction could only be had for six violations of the law. This decision is in line with the case of Standard Oil Company of Indiana v. United States, 164 Fed. Rep., 376. In that case the Standard Oil Company was fined \$29,240,000 upon a verdict of guilty upon 1462 counts of indictment for receiving concessions from a railroad company on shipments of oil in violation of the Elkins act. Judge Grosscup, for the Circuit Court of Appeals, in reversing the judgment of the trial court, holds that the theory upon which the case was tried in the court below, that each car transported constituted a separate offense under the act, was not tenable, and that the offense denounced by the statute is the acceptance of a concession, irrespective of whether the property involved was carloads, train loads or pounds, and that, therefore, the assessing of a separate penalty for each car transported was obviously an error. We submit, therefore, that the Court of Civil Appeals was in error in reforming and affirming the judgment of the trial court, and entering judgment for twenty-four penalties, instead of five, and that the trial court was likewise in error in permitting a recovery for more than one penalty, and that, under the facts of this case, conceding the State rate to be applicable under the article relied upon, it was not permissible to recover more than one penalty, and that the judgment both of the Court of Civil Appeals and the District Court should be reversed.

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Fifth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain the appellants' fifth assignment of error, which is as follows:

"The court erred in overruling and failing to sustain special exception of the defendant Texas & New Orleans Railroad Company, as contained in paragraph five of the amended original answer of said company, to the effect that if Article 4575 of the Revised Statutes of the State of Texas, being Section 17 of the act of April 3rd, 1891, creating a Railway Commission, and under the provisions of which this action is brought, permits the cumulation of penalties for alleged successive acts of overcharge, committed prior to the institution of the suit, that then, and in that event, the same is invalid and void as in contravention of Section 13, Art. 1, of the Constitution of the State of Texas, which provides that 'excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.' And in contravention of the fourteenth amendment to the Constitution of the United States, which provides: 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'"

Proposition.

Should the state in question be construed to authorize the accumulation of penalties, it would then be void as in contravention of Article Fourteen of the amendments to the Constitution of the United States, Section One, in that it would deny to the offending railway company due process of the law and the equal protection of the law, and would also be in violation of Section Fifteen of Article One of the Bill of Rights of the State of Texas, which prohibits the imposition of excessive fines, and prohibits the infliction of cruel or unusual punishment.

Statement.

Plaintiff was for total overcharges of \$1,768.33, and for the maximum penalty of \$200.00 for each of thirty-three cars, making a total of penalties well over of \$16,500.00. (Tr., pp. 2-12.)

Defendant companies specially excepted to the demand for penalties upon the ground set out in the assignment. (Tr., pp. 28-29.) These special exceptions were overruled by the trial court, to which ruling defendant excepted. (Tr., pp. 35-36.)

Authorities.

Sec. 1, Art. III, Amendments to Constitution of the United States.
 Sec. 12, Art. 1, Bill of Rights, State of Texas.
Gilmer v. M. C. S. Stock Yards, 163 U. S., 79.
Consolidated Gas Company v. Mayor, 146 Fed. Rep., 150.
Ex parte Wash, 125 Fed. Rep., 190.
State v. G. H. & S. A. Ry. Co., 97 S. W., 71.
H. K. & T. v. State, 97 S. W., 734.

Each Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain applicant's sixth assignment of error, which is as follows:

"The court erred in sustaining special exception No. 7, contained in plaintiff's first supplemental petition, filed herein January 20, 1906, to paragraph 18 of the first amended original answer of defendant, the Texas & New Orleans Railroad Company, as follows:

"I, Plaintiff, do hereby specially except to the eighteenth paragraph of said answer, and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railroad Commission of Texas in an action between the Dallas Traction Company, plaintiff herein, a private party, and the railway companies affected by said rates, in violation of Art. XXXI of the Revised Statutes of the State of Texas, the same being Section 3 of an act passed by the Twenty-

"second Legislature of the State of Texas, entitled, "An act to establish a Railway Commission for the State of Texas," etc., and appearing on page 58 of the acts of 1891, for the reason that in an action to recover penalties for an alleged violation of the rates, orders, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States."

First Proposition.

When an individual sues for penalties for an alleged overcharge, he acts in that capacity for and in behalf of the State of Texas, and if the rate prescribed is confiscatory, he is entitled in a direct action therefor, under the statute, to set up in his defense that the same is confiscatory and in contravention of the Fourteenth Amendment to the Constitution of the United States, and to deny him the right to show that such rate is confiscatory, is to deprive him of due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

Second Proposition.

Article 4564 of the Revised Statutes of the State of Texas, if construed to deprive defendants of the right in an action for penalties for non-observance of a rate prescribed by the Railway Commission of Texas, upon the ground that the same is confiscatory, is a denial of due process of the law and of the equal protection of the law, in contravention of the Fourteenth Amendment of the Constitution of the United States.

Statement under Two Preceding Propositions.

Petitioner, in paragraph 18 of its answer (Tr., p. 58), alleged that the rate of 6½ cents set up by defendant in error as the legal rate applicable to the shipments in controversy was unreasonable and confiscatory, and did not pay for the cost of the service performed, and that if said rate was enforced defendant would be compelled to do such service at a loss. To this defendant in error interposed the special exception, in its supplemental petition, that the action was between private parties, and that, under Art. 4564, R. S., the reasonableness of the rate could not be inquired into. (See special exception No. 7, first supplemental petition, Tr., p. 78.)

Authorities.

Amendment to the Constitution of the United States, Art. 14, Sec. 1.

The Constitution of the State of Texas, Art. 1, Bill of Rights, Sections 19 and 20.

Railway Company v. Minnesota, 134 U. S., 418.

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Seventh Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain appellants' twenty-third assignment of error, which is as follows:

"The court erred in permitting a recovery for penalties, under the facts in this case, for the reason that, under the Constitution and laws of this State, no penal act which is so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, can be enforced."

Statement and Argument.

Article 4575, R. S., under which penalties are sought to be recovered herein, provides that:

"In case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railway shall pay to the person, firm or corporation injured thereby a penalty of not less than \$125.00 nor more than \$500.00."

It will be noted that this statute provides for a penalty for extortion.

Article 4573, R. S., defines extortion to be the charging of a greater rate, charge or compensation than that fixed by the Railroad Commission for the transportation of freight, etc. If the statute does not mean, as is contended by petitioners, that one penalty only can be recovered in one suit, then we submit that it is unquestionably void for lack of certainty. The learned counsel for defendant in error, in his petition, claims that inasmuch as there were thirty-three cars involved, he was entitled to the maximum

penalty for each car, and, therefore, asked for thirty-three separate penalties. Being in doubt, however, as to the correctness of this contention, he asks, in the alternative, that inasmuch as these thirty-three cars were shipped on twenty-six different days, he be allowed to recover for twenty-six different penalties. The learned trial judge took the position that, inasmuch as the freight charges were paid at five different times, there could necessarily be but five acts of extortion, and charged the jury that verdict could be rendered for only five penalties of not less than \$125.00 nor more than \$500.00. The learned Court of Appeals,

finding that the shipments moved on twenty-four different days, concluded that there were twenty-four acts of extortion, and reformed the judgment so as to allow recovery for twenty-four minimum penalties of \$125.00 each, aggregating \$3,000.00. We ask, where is the authority under the statute for assessing penalties by the rule of the number of days required to make the shipment? There were thirty-three carloads. The rate in question applies to lumber in carload lots. Why not, therefore, thirty-three penalties, instead of twenty-four? There were thirty separate bills of lading. The rate charged is assessed in each bill. Why not, therefore, thirty separate penalties? The rate which it is alleged petitioners have failed to obey is a rate of $6\frac{1}{2}$ cents per hundred pounds. The total weight of the lumber transported is 2,104,000 pounds; that is to say, 21,040 hundredweight. There is an overcharge, therefore, of $8\frac{1}{2}$ cents on each hundredweight, and there should, therefore, be 21,040 penalties. Can it be said that a statute which counsel for defendant in error cannot certainly construe, that the trial judge
 753 construes one way, and which the Court of Civil Appeals
 construes in a third and different way, is sufficient to advise the citizen of his rights in the premises? If this statute does not mean that one penalty only can be recovered, then we submit that it is unquestionably, under the laws of this State, void for uncertainty.

Eighth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' thirty-first and thirty-second assignments of error, which are as follows:

"Thirty-first Assignment of Error: The court erred in holding, as a matter of law, that the action of defendant, in applying the Interstate Commerce Commission rates, regularly established, filed and published by the defendants, to the shipments in controversy herein, instead of the rates prescribed by the Railway Commission of Texas, if a mistake, was a mistake of law, and not of fact, and in refusing to submit to the jury the issue as to whether the defendants herein, in applying the rates in controversy, were acting under an honest belief that the rates applied to the shipments in controversy were the lawful rates; and in failing and refusing to give special charge No. 5, requested by defendants, to the effect that if the defendants, their servants and agents, believed, in good faith, that the shipments in controversy herein were foreign commerce, and, so believing, applied said rates in good faith; that the same constituted a mistake of fact, which would excuse defendants from the infliction of the penalties sued for."

"Thirty-second Assignment of Error: The court erred in failing and refusing to give special charge No. 5, asked by the defendants, to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont,

"Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company, situate adjacent to the station of
 754 "Sabine, Texas, on a road of the latter company, when intended for export to foreign countries, other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the interstate tariffs so filed; and that, if they believed from the evidence that the defendant, the Texas & New Orleans Railroad Company, and its agent, acting in that behalf, believed, in good faith, and acting upon reasonable grounds for that belief, that the shipments in controversy were foreign shipments, and intended for export to foreign countries, other than Mexico, then, in that event, they should find for the defendants upon the issue of penalties theretofore submitted by the court."

Proposition.

Under Article 4575 of the Revised Statutes it is permitted to plead and prove, in an action for penalties under the statute, that such charges were unintentionally and innocently made through a mistake of fact.

Statement and Argument.

Petitioners each separately pleaded that the interstate rate of 15 cents per hundred pounds having been regularly filed and published with the Interstate Commerce Commission, they believed in good faith that the same was applicable to the shipments in controversy. T. G. Beard, the General Freight Agent of the Texas & New Orleans Railroad Company, testified that he not only believed in good faith that the interstate rate applied, but that he took legal advice thereon, and was advised by competent counsel that the rate filed with the Interstate Commerce Commission was the only rate legally applicable. As will be hereinafter more specifically set out,
 755 it appears that this commerce moved in continuous transit from Ruliff, the point of origin, to final destination in Europe; that ships were chartered for the transportation before it began to move from Ruliff, the point of origin; that it was of a peculiar character, used only for export; that W. A. Powell & Company, Ltd., to whom it was consigned at Sabine, were engaged exclusively in export business; that no local shipments of such lumber were ever made to Sabine; that the Sabine Tram Company knew it was for export; that Sabine Tram Company had, prior to the beginning of these shipments, sold other lumber of the same character to W. A. Powell Company, Ltd., for export through Sabine; that W. A. Powell Company, Ltd., had insured the stuff prior to its arrival at Sabine, covering its transit to European points; that the ships were waiting at the dock for its arrival; that every car moved continuously from point of origin, Ruliff, to the slips at Sabine, the lumber deposited therein and promptly moved to ships' hold. It further appears that these shipments were consigned

to the order of Sabine Tram Company at Sabine, shipper's order notify W. A. Powell Company, Ltd.; that immediately after delivery of the bill of lading to Sabine Tram Company at Ruliff, the bill was attached to sight draft upon W. A. Powell Company, Ltd. at New Orleans, and that in almost every case the draft had been paid prior to the arrival of the car at Sabine; that, on arrival there, one Flannagan, acting for both parties, directed the movement of the cars to the slip, and claimed all the benefits of the interstate rate; that is to say, seven days' free time, exemption from switching charges, etc.

We wish, at this point, to call the special attention of the court to the following: Prior to the publication of the 15-cent export rate, there was in force a 4-cent per hundredweight export rate. It is entirely clear that Sabine Tram Company intended this traffic as export traffic, and meant to take advantage of what they supposed to be the 4-cent per hundredweight export rate. This rate, however, had been cancelled prior to the movement, and a 15-cent rate legally published, of which Sabine Tram Company was ignorant, and on August 3, 1906, the Sabine Tram Company wrote to W. A. Powell Company, Ltd., at New Orleans (see Statement of Facts, pp. 5 to 6), as follows:

"In this connection, beg to advise that the railroad company will probably try to collect rates in excess of 4 cents, as they are trying to increase their export rate. We wrote you in reference to this on the 29th. We would thank you to refuse to pay anything in excess of 4 cents until it is absolutely demonstrated that they are going to enforce that rate, and we would thank you to make each payment under protest, recording in your check rate paid under protest."

Mr. Flannagan, the agent of both parties at Sabine, testified (S. F., p. 49) as follows:

"The reason I called up Mr. Walden (General Manager of the Sabine Tram Company) was, we had handled a whole lot of export lumber before. The export rate on export lumber theretofore had been 4 cents, and when they demanded 6 and afterwards 15 cents, I called up Mr. Walden. What I understood, and what my people understood, was that the rate of 4 cents was the rate on export lumber. It was what I understood to be the export rate. I can't remember and don't now know how long it was before I began to receive this sort of lumber involved in this suit, since I had occasion to pay freight on other export lumber at Sabine. Don't know whether it was several months, or it might have been only a day or two. I cannot say whether I had paid the 4-cent rate on export lumber at Sabine at any time after August 6th or not. I don't remember the date, but, up to this shipment, we had only paid 4 cents. I never did know the local rate on freight delivered locally at Sabine. I never inquired to find out. It is a fact that when I called up Mr. Walden and explained that they were demanding 6 cents, he told me to tender the legal export rate of 4 cents, and that if they demanded more than that, to pay it under protest."

At this point, the following question was asked the witness:

"Q. In that conversation about the same matter, didn't he (Walden) say that he understood the railroad was trying to raise or increase the export rate or the rate on export stuff; that he wanted it paid under protest, and to try and see if they couldn't defeat the export rate?" To which the witness answered: "A. It is a fact that I told Mr. Walden that the railroad was doing that, and he never asked me the question, but I told him I thought the railroads were trying to do that. I didn't know of any other reason why they were trying to raise the rate on this export stuff."

He was then asked the following question:

"Q. After you had that conversation with him about it, didn't he say, in effect, that he was going to try to make the local Texas Commission rate apply, if they were going to raise the export rate?" to which Flannagan answered: "I did."

Then followed this question:

"Previous to that time, the regular export rate had been recognized and paid on all of that going to Sabine?" To which the witness answered, "Yes."

It appears that, prior to August 6th, the export rate had been 4 cents per hundred pounds, and that at that time the 15-cent rate became effective, and it was clearly the intention of the Sabine Tram Company, as well as W. A. Powell Co., Ltd., to apply the 4-cent export rate. This explains why every way-bill for every shipment involved in this controversy is marked "Interstate." It is contended by defendant in error that the way-bills are made out by the railway company, and that the Sabine Tram Company cannot be bound thereby. It must be remembered, however, that the way-bills are made out at the point or origin, and the Texarkana & Ft. Smith Railway Company's agent could not reasonably have known that the shipment involved in the bill of lading was for export, unless it had been advised by the Sabine Tram Company. It is inconceivable that if this lumber was intended for local delivery, that the Texarkana & Ft. Smith Railway Company should have, of its own motion, without instruction from any source, stamped upon every way-bill "Interstate." This information must have, therefore, been obtained from the consignor. The situation then is: Sabine Tram Company believes that it is, in effect, a 4-cent export rate. It ships the lumber to Sabine consigned to its own order, and directs Flannagan, who for that purpose is its agent, to pay this export rate of four cents, and no other, except under protest. The way-bills are marked "Interstate." Flannagan, giving the agent of the T. & N. O. to understand that it is export stuff, as it was in fact, contends that the 4-cent export rate applies, pays all over that under protest, avails himself of the export privileges, including the seven days free time and relief from switching charges, and, under this state of facts, the T. & N. O. demands and receives the regularly filed and published export rate. Surely, under this state of facts, if, as a matter of fact, the State rate applied, is it not an innocent mistake of fact which should have been submitted to the jury? W. A. Powell Company believed it to be subject to the inter-

state rate; Flannagan, the joint agent of W. A. Powell Company and of Sabine Tram Company, believed it to be subject to the interstate rate. It moved in continuous transit from Ruliff to ships' hold, and was thence transported to Europe. All the privileges covered by the interstate rate of free time and exemption from switching charges were demanded and given. The way-bills showed that it was subject to the interstate rate and each being marked "Interstate" and "For Export to Europe." Under all of these facts, the carrier sought the advice of counsel, who then advised, and who still believes that advice to be correct, that the shipments were subject to the interstate rate, and, acting upon that advice, and with the facts before him, the interstate rate was collected. Upon the trial, petitioners requested the court to give special charges Nos. 5 and 6 (Tr., pp. 84-86), to the effect that if, under the facts, the defendants believed that in good faith the shipments were foreign commerce, and that the interstate rate was applicable, and had reasonable grounds for such belief, they would find for defendants upon the issue of penalties. These charges were refused, and defendants excepted and assigned error thereon, which assignments were overruled by the Court of Appeals.

Ninth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' thirteenth assignment of error, which is as follows:

"The court erred in permitting the recovery of penalties in

760 "any amount herein, and the verdict and judgment rendered

"herein is erroneous, in finding for plaintiff upon the issue

"of penalties herein, in this, that the uncontradicted testimony shows

"that the shipments by plaintiff declared upon, moved in a continuous and unbroken journey from Ruliff, Texas, the point of

"origin, through Sabine, a port of trans-shipment, to a foreign port;

"that prior to said shipments, defendants, had promulgated and filed

"with the Interstate Commerce Commission tariffs of rates applicable

"to such movements, and that defendants actually applied only such

"rates to such movements that defendants, under An Act to Regulate

"Commerce, approved February 4, 1887, and acts amendatory

"thereof, and the act of Congress approved February 19th, 1903,

"commonly known as the Elkins act, and acts amendatory thereof,

"was compelled, under the threat of severe penalties, to apply said

"tariff, and no other tariffs; and that, under the Railroad Commission

"act of Texas, the charging and receiving of freight charges,

"in excess of the rates prescribed by said Commission, is punishable

"by a penalty of not less than one hundred and twenty-five dollars

"(\$125.00) nor more than \$500.00, and that, to compel these defendants,

"at their peril, to decide, as a matter of law, which was

"the correct rate, and to punish them by the infliction of said penalties for a mistake of law, as to which was applicable, is to deprive

"them of their property without due process of law, and deprive

"them of the equal protection of the law, contrary to the Fourteenth

"Amendment of the Constitution of the United States."

Tenth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' nineteenth and twentieth assignments of error, which are as follows:

"Nineteenth Assignment of Error. The court erred in failing and refusing to give special charge No. 3, asked by defendant Texarkana & Fort Smith Railway Company, to the effect that
761 "plaintiff cannot recover any penalty against the Texarkana & Fort Smith Railway Company, and directing the jury to find a verdict in favor of that company on said issue."

"Twentieth Assignment of Error. The court erred in failing and refusing to give special charge No. 4, requested by the defendant, the Texas & New Orleans Railroad Company, to the effect that there are no facts in evidence which will justify the jury in rendering a verdict for penalties in any amount against the Texas & New Orleans Railroad Company, and instructing them to find a verdict in its favor upon that issue."

First Proposition under Two Preceding Specifications of Error.

The testimony herein shows that the shipments in controversy were export and foreign commerce, and moved in continuous and unbroken transit from point of origin through a port of trans-shipment to European ports, and were subject to the rates, rules and regulations of the Interstate Commerce Commission, and the only rate legally applicable thereto was that of 15 cents per hundred pounds, as prescribed in the tariffs regularly filed and published with the Interstate Commerce Commission, and such tariff was not subject to the rates, rules and regulations of the Railroad Commission of Texas, and that to undertake to apply the same thereto is an interference with interstate and foreign commerce in contravention of Art. 1, Section 8, of the Constitution of the United States, and in conflict with the act of Congress commonly known as the interstate commerce act, approved February 4, 1887, and the acts amendatory thereof, and the imposition of penalties for failure to apply the rates, rules and regulations of the Railroad Commission of Texas is a denial of a right claimed by petitioners under the Constitution and laws of the United States.

762 Second Proposition under Two Preceding Specifications of Error.

The testimony herein shows that petitioners acted in good faith and upon reasonable grounds, and that if they were mistaken in believing that the interstate rate was applicable, such mistake was a mistake of fact, and unintentionally and innocently made.

Eleventh Specification of Error.

The Court of Civil Appeals erred in entering judgment in favor of defendant in error for \$3,000.00 penalties for alleged overcharges, for the reason that the shipments in controversy constituted foreign commerce, which was not subject to the rates, rules and regulations of the Railroad Commission of Texas, and the imposition of such penalties by its said judgment is an impediment to, and an interference with, interstate commerce, contrary to the provisions of Section 8, Art. 1, of the Constitution of the United States, which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes"; and contrary to, and in conflict with, the act of Congress of the United States commonly known as the Interstate Commerce Act, approved February 4, 1887, and acts amendatory thereof, and is a denial of, and decision against, the rights, titles, privileges and immunities claimed under the Constitution and statutes of the United States, and of authority exercised thereunder.

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Twelfth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' tenth, eleventh and twelfth assignments of error, which are as follows:

"Tenth Assignment of Error: The court erred in failing to direct a verdict in favor of the defendants herein, and in failing and refusing to give special charge No. 1, requested by defendants, directing the jury to return a verdict in favor of the defendants, and each of them."

"Eleventh Assignment of Error: The court erred in rendering and entering judgment for any amount against the defendants herein, for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce, moving from a point within the United States, through a port of trans-shipment to foreign countries, and that these defendants herein, prior to said shipments, had legally established, filed with the Interstate Commerce Commission, and published schedules and tariffs of rates applicable to such shipments, and that the rates so established in said tariffs and schedules, filed and published, and were the legal rates applicable thereto."

"Twelfth Assignment of Error: The court erred in failing and refusing to direct a verdict in favor of the defendants, because the evidence shows, without dispute, that when said lumber mentioned in plaintiff's petition started on its journey from Ruliff, Texas, same was destined to a foreign country, and constituted foreign commerce, and not intrastate commerce; that it was in fact shipped from Ruliff, Texas, a point in the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico,

"to a foreign country, and was not subject to or controlled or
 "affected by the rules, rates and regulations of the Railway Com-
 "mission of Texas, and the enforcement of said rules, rates and
 "regulations of the Railway Commission of Texas, in respect to
 "said shipments, is, therefore, violative of Section 8, Art. 1,
 764 "of the Constitution of the United States, and the act com-
 "monly known as the Interstate Commerce Act, approved
 "February 4th, 1887, and acts amendatory thereof."

Proposition under Above Specification of Error.

Under the facts in this case, the shipments to which was applied the rate complained of were foreign shipments, and constituted a part of the foreign commerce of the country, and were, therefore, not subject to the rates, rules and regulations of the Railroad Commission of Texas, but were subject only to the rates established in compliance with the provisions of the Interstate Commerce Act of date February 4, 1887, and acts amendatory thereof, and the judgment of the District Court of Jefferson County, Texas, and of the Court of Civil Appeals herein complained of, constitute an interference with, and impediment to, such foreign commerce, and are in contravention of Section 8, Art. I, of the Constitution of the United States and of said Interstate Commerce Act passed by the Congress of the United States, approved February 4, 1887, and acts amendatory thereof, and is a denial of rights, titles, privileges, immunities and authorities claimed under said Constitution of the United States, and of said statute of February 4, 1887, and acts amendatory thereof.

Statement.

Defendant in error having filed its suit for alleged overcharges and penalties by reason of the failure of defendants to charge and collect the rate prescribed by the Railroad Commission of Texas of 6½ cents per hundred pounds on the shipments in controversy, petitioners each answered that the shipments in controversy
 765 were not subject to the rates prescribed by the Railroad Commission of Texas, but that the same constituted and were foreign commerce, moving in continuous transit from Ruliff, Texas, through Sabine, a port of trans-shipment, to points in a foreign country, to wit, to Europe, and that prior thereto defendants had each legally filed with the Interstate Commerce Commission, in compliance with the Interstate Commerce Act, approved February 4, 1887, and the rules and regulations of the Interstate Commerce Commission, made in accordance therewith, and legally published the same, a tariff of charges under which the legal rate applicable to such shipments was 15 cents per hundred pounds, and that said shipments were solely subject to, and governed by, the Constitution and laws of the United States, and especially by said act of Congress, and the rates, rules and regulations of the Inter-

state Commerce Commission made in accordance therewith. (See first amended original answer of Texarkana & Ft. Smith Railway Company, Tr., pp. 62-74, and first amended original answer of Texas & New Orleans Railroad Company, Tr., pp. 28-61.)

Upon the trial, defendants each requested the court to return a verdict for the defendants, which charge was refused by the court. (Tr., pp. 81-87.) The trial court, thereupon, instructed the jury, as a matter of law, that the shipment of lumber which furnishes the subject-matter of this suit was an intrastate transaction, and that, therefore, the rates promulgated and prescribed by the Railroad Commission of Texas have application to such shipments, and the rates and liabilities of the parties to the suit must be governed and tested by the rules and rates promulgated by said Railroad Commission of Texas, and by the laws of the State of Texas pertaining to the enforcement of such rules and rates, and that since it appears from the undisputed evidence that the defendants Texarkana & Ft. Smith Railway Company and Texas & New Orleans Railroad Company did, in fact, collect from the plaintiff the sum of \$1,788.00 in excess of the amount that said defendants should have collected from plaintiff as freight charges for the shipments of lumber involved in the transaction which furnishes the subject-matter of this suit, that they should return a verdict in favor of plaintiff against the defendants jointly for the sum of \$1,788.00. (Tr., pp. 79-80.) In accordance with the charge of the court, verdict was rendered in favor of plaintiff for the amount mentioned, with penalties and judgment entered thereon. (Tr., pp. 90-92.) Defendants' motion for a new trial having been overruled, due exception was made and appeal perfected.

Prior to August 6, 1906, there was in effect an export rate of four cents per hundred pounds. This, by tariffs regularly filed and published with the Interstate Commerce Commission, had been changed to 15 cents per hundred pounds. (See testimony of T. G. Beard, S. F., p. 66; testimony of J. W. Flannagan, S. F., pp. 49-50.)

In August, 1906, W. A. Powell Company, Limited, had made sales to customers for future European delivery of large quantities of heavy pine lumber, and had chartered two steamships to carry same from the port of Sabine. After these sales had been made and these ships chartered, to wit, on August 28th, said W. A. Powell Company purchased one-half million feet of lumber, amounting to thirty-three carloads, from defendant in error, Sabine Tram Company, to apply on such contracts, the same to be delivered by the Sabine Tram Company to W. A. Powell Company, Limited, f. o. b. Sabine, during the months of September and October, 1906. W. A. Powell Company, Limited, were at the time, and had been for a long time prior thereto, engaged exclusively in the business of exporting lumber, and were so known to the Sabine Tram Company. The lumber ordered and shipped was of the peculiar dimensions used only in the export trade, and as such was known to all the lumber trade as export lumber. Prior to this contract of August, 1906, Sabine Tram Company had sold

other export lumber to W. A. Powell Company, Limited, which had been shipped out through Sabine under the old export rate. The town of Sabine consists of about fifty inhabitants, and there is no local market for lumber there. The Sabine Tram Company had never shipped any lumber to that point for local delivery for a number of years. It was, to the contrary, a regular port of transshipment, and, during the year 1905, there was exported through the port 14,667,670 feet of lumber, and for the year 1906, 39,554,000 feet. The Court of Civil Appeals finds: "The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine." The lumber involved was purchased expressly for export, and the Sabine Tram Company knew that it was intended for export. The manner of shipment was as follows: The cars were billed out of Ruliff, Texas, by the Sabine Tram Company, to the station of Sabine, the bills of lading naming Sabine Tram Company as the consignor, and naming "Sabine Tram Company notify W. A. Powell Company, Limited, as consignee." The bill of lading for each car was indorsed by Sabine Tram Company, and by it attached to an invoice for the lumber loaded thereon, together with a sight draft drawn by the Sabine Tram Company on W. A. Powell Company, Limited, for the amount of invoice, which draft was paid by, and bill of lading delivered to, W. A. Powell Company, Limited, before the arrival of the car therefor at Sabine. By payment of the drafts, W. A. Powell Company, Ltd., became the owner of the lumber, and the Sabine Tram Company no longer claimed or had any interest in the same, but owed to W. A. Powell Company, Limited, a refund of whatever amount the freight charges were on said car from Ruliff to Sabine, which refund was, in due course, paid by Sabine Tram Company to W. A. Powell Company, Limited. The way-bill accompanying each shipment was stamped "Interstate," and on each way-bill is written, "For export to Europe." The local station of Sabine is about one-half mile from the port of Sabine, where petitioner, Texas & New Orleans Railroad Company, has provided terminal facilities, including wharves, docks and slips for the exclusive accommodation of export and import and coastwise movements of freight. No freight carried to Sabine by rail, intended for local consumption, was ever delivered at such docks or wharves. W. A. Powell Company, Limited, prior to the arrival of the lumber, had taken out a blanket policy of insurance covering the lumber until its arrival at European ports. C. S. Flannagan, who was agent for W. A. Powell Company, Limited, acted also as agent for Sabine Tram Company at Sabine in presenting the bills of lading and paying the freight. Under his instructions, the cars were delivered upon the wharves of the Texas & New Orleans Railroad Company, about one-half mile distant from the local station of the Texas & New Orleans Railroad Company, and the lumber transferred from the cars directly into the slips, from which it was transferred to the hold of the waiting ship, by which it was thence taken to European ports. Under the Railroad Commission

of Texas rules, \$1.50 is allowed for switching charges, and forty-eight hours free time. Under the Interstate Commerce Commission rules, \$2.50 is allowed for switching charges, and seven days free time allowed. The switching charge of \$2.50 per car, under the Interstate Commerce regulation, is absorbed in the 15-cent rate. Flannagan demanded and received the seven days free time allowed under the Interstate Commerce Commission rules, and paid no switching charges. He says (S. F., 60):

"The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff, and were switched up to the wharves and slips without being unloaded at the local station. They were all unloaded at the slips, switched up there and unloaded there. I know that it was a continuous movement right there through the local station at Sabine up to the port of trans-shipment. The lumber was shipped out to Europe by the vessel Manchuria, billed for Greenock, Scotland; the Olive Moore, to Aberdeen and Queensboro, and the Chelford, for Zandamm, Holland, which had been previously chartered for that purpose. As stated, all three of the ships had been chartered for the purpose of transporting this lumber, prior to its arrival, for application to contracts already made, and one of the ships waited at the docks for the arrival of part of this lumber which constituted a part of its cargo. One of the ships which carried the last shipment of lumber was chartered by W. A. Powell Company, Limited, after the lumber began to arrive at Sabine, but before all of the shipments had left Ruliff. None of the lumber remained in the slip at
770 Sabine or on the docks, except for the time necessary to await the arrival of the particular ship which had been chartered for the purpose, and which had been designated by W. A. Powell Company, Limited, as the ship which was to carry that particular lumber from the port of Sabine to the European port."

It appears that, on arrival at Sabine, both W. A. Powell Company, Limited, and Sabine Tram Company, expected to pay the old export rate of 4 cents, and being compelled to pay 15 cents, paid under protest. This appears from letter of Walden, page 5, S. F., and the testimony of Flannagan, page 49, S. F., as follows:

"The reason I called up Mr. Walden was, we had handled a whole lot of export lumber before, and the export rate on export lumber theretofore had been 4 cents, and when they demanded 6, and afterwards 15 cents, I called up Mr. Walden. I understood, and what my people understood, was that the rate of 4 cents was the rate on export lumber. It was what I understood to be the export rate. I can't remember and don't know how long it was before I began to receive this sort of lumber involved in this suit since I had occasion to pay freight on other export lumber at Sabine. Don't know whether it was several months, or might have been only a day or two. I cannot say whether we had paid the 4-cent rate on export lumber at Sabine any time after August 6, 1906, or not. I don't remember the date, but up to this shipment, we had only paid 4 cents. I knew that up to that time the export rate had been 4 cents. I never did know the local rate paid on freight delivered locally at

Sabine. I never inquired to find out. It is a fact that when I called up Mr. Walden and explained that they were demanding 6 cents, he told me to tender the regular export rate of 4 cents, and if they demanded more than that, to pay it to them under protest. It is a fact that I told Mr. Walden that the railroad was doing that. He never asked me the question, but I told him I thought the railroad was trying to do that. I didn't know of any other reason why they were trying to raise the rate on this export stuff. After I had that conversation with him, he said, in effect, that he was going to try to make the local Texas Commission rate apply, if they were still going to raise the export rate. Previous to that time, the regular export rate had been recognized and paid on all of that going to Sabine. I couldn't state whether, on these shipments, we ever used the whole seven days allowed on export shipments or not. I don't think we ever used the entire seven days. The expense bills will show that. I am pretty sure there never was any claim for demurrage against any of these cars. I know that as a rule, after they reach Sabine, they were given prompt service. The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff, and were switched up to the wharves and slips without being unloaded at the local station. They were all unloaded at the slips, switched up there and unloaded there. I know that there was a continuous movement right through the local station of Sabine up to the port of trans-shipment. There was only one instance where the car beat the bill of lading to me. It was only in one instance the lumber coming in on cars after the ship was in port. I remember that clear. It was a fact that it was for only one car that we held the shipment. The ship was waiting for the lumber when that car got there, but it was not waiting for that particular car. The ship was waiting for the lumber, and that car got there and we unloaded it into the slip and measured it up. I don't think it was until, and loaded it into the ship. The reason I wanted Mr. Walden to send the bill of lading to me without sending to New Orleans, was because I wanted the lumber released and measured up, to know how much I would have for a ship that was either there or coming. All these ships chartered by W. A. Powell Company, Limited, at the time, operated in several ports. I would not say positively whether it was a fact, at the time of the purchase of this particular lumber, we had ships chartered for that particular lumber. I know that when I got advice from New Orleans that I had shipments to make, but at the particular time when this contract was made, there were several vessels that would come up to Sabine afterwards. After the contract was made, they would proceed to sail from there. Mr. Powell, on the day he made these purchases, said that he had some contracts to make, but named no particular ship to me. That lumber was bought to fill contracts that he had already made, and these contracts were for sale abroad. The lumber was actually sent out from Sabine to fill these orders."

The testimony of both Walden and Flannagan shows that the intention of each was to take advantage of the 4-cent export rate that

had, prior to August 6th, 1906, been in effect. This is conclusively shown by the fact that in the first seven cars a charge of 6 cents per hundredweight was erroneously assessed, and Flannagan, acting under Waldon's instructions, protested it as in excess of the 4-cent export rate.

Authorities.

- Constitution of United States, Art. 1, Sec. 8.
 Interstate Commerce Act, approved Feb. 4, 1887, as amended June 29, 1906, and April 13, 1908.
 Elkins Act, approved February 19, 1903, as amended June 29, 1906.
 Houston Direct Navigation Co. v. Ins. Co., 89 Tex., 1.
 Gaines v. Railway Co., 75 Tex., 572.
 State v. I. & G. N., 71 S. W., 994.
 State v. G. C. & S. F., 44 S. W., 542.
 State v. Southern Kansas Ry. Co., 49 S. W., 252.
 M. K. & T. Ry. Co. v. Fielder, 46 S. W., 663.
 G. C. & S. F., v. Fort Grain Co., 72 S. W., 419.
 Railway v. Barry, 45 S. W., 814.
 Swift & Company v. U. S., 196 U. S., 390.
 Armour Company v. U. S., 209 U. S., 56.
 Railway v. Simms, 191 U. S., 448.
 Railway v. I. C. C., 162 U. S., 197.
 Hanley v. Railway Co., 187 U. S., 617.
 R. R. Commission of Louisiana v. Railway, 144 Fed. Rep., 68.
 Rosenbaum Grain Co. v. Railway, 130 Fed. Rep., 46.
 Globe Elevator Co. v. Andrews, 144 Fed. Rep., 871.
 Cutting v. Railway, 46 Fed. Rep., 641.
 Cosmopolitan Shipping Co. v. Hamburg-Am. Packing Co., 13 I. C. C. Rep., 266.
 Bayer Brothers v. Railway, 13 I. C. C. Rep., 329.
 Eichenberg v. Railway, 14 I. C. C. Rep., 250.
 In re Tariffs on Exports and Imports, 10 I. C. C. Rep., 70.
 U. S. v. Railway, 153 Fed. Rep., 630.
 T. & P. Ry. Co. v. Taylor, 118 S. W., 197 (writ of error granted).

Argument.

This cause presents the bald, naked question: Does the contract of shipment fix the character of the traffic? Can the shipper, by the use of a local bill of lading, convert traffic which in its essential nature is foreign commerce, and under the jurisdiction of the Interstate Commerce Commission, into local traffic subject only to the control of the particular State where is situate the port of export or import? Defendant in error relies solely upon the remarks of Mr. Justice Brewer in *G. C. & S. F. v. Texas*, 204 U. S., 403, and the learned Court of Appeals does not look beyond that case. We

assert with entire confidence that the case is not authority for the proposition, and that it finds no basis either in the decisions of this court or of any Court of Civil Appeals of this State, or of the Supreme Court of the United States, or the inferior Federal Courts, or of the Interstate Commerce Commission. It will be noted that Justice Brewer nowhere states that the contract of shipment fixes the character of the traffic. His words are:

"It is undoubtedly true that the character of a shipment, whether local or interstate, is not changed by a transfer of title during the transportation, but whether it be one or the other, may depend on the contract of shipment."

774 It will be noted that the original contract of shipment in that case was from Hudson, South Dakota, to Texarkana. When that contract was made, Texarkana was the fixed and ultimate destination of the traffic. It was not contemplated that there should be a transportation beyond. That contract having been performed, and the relations of the shipper with the carrier having been absolutely terminated, the movement from Texarkana to Goldthwaite was a new and wholly different contract, appertaining to different parties, and moving between points wholly within the State. The learned Court of Civil Appeals frankly treats the decision in that case as overruling Houston Direct Navigation Company v. Insurance Company, 89 Tex., 1, and the long line of cases following it. Oblivious of the fact that this court, in its opinion in the Texarkana case, evidently did not consider that it had departed from the rule of decision laid down in the Houston Direct Navigation case, and in the decisions following it, and oblivious also of the fact that the Supreme Court of the United States, in the later case of Armour Company v. U. S., 209 U. S., 56, had declared that the essential nature of commerce cannot be controlled by the mere form of a bill of lading, and further regardless of the fact that the Interstate Commerce Commission has more than once, since the decision of Judge Brewer, decided that commerce of the exact character as that here involved was subject to the rates, rules and regulations of that body. In the case at bar, it appears without dispute that prior to the execution of the contract with defendant in error, W. A. Powell Company, Limited, had contracted to sell at several European points lumber of the amount and character of that purchased, and

775 and that the purchase was made for the express purpose of filling those contracts. The lumber was of peculiar dimensions, and of a character used exclusively in the foreign trade, and the Sabine Tram Company knew that it was for export. A large quantity of the timber from which it was sawn was hauled to the mills at Ruliff from Louisiana. W. A. Powell Company, Limited, was engaged exclusively in the export business, and this Sabine Tram Company well knew. Prior to the making of this contract, Sabine Tram Company had sold to W. A. Powell Company, Limited, lumber of the same character for export, which moved out from Ruliff through the port of Sabine to European ports, exactly as this lumber moved, on the export rate of 4 cents per hundred pounds. The contract of purchase gave W. A. Powell Company, Limited,

the right to receive the lumber either in the water at Orange or at Sabine, and the testimony of the manager of the Sabine Tram Company discloses that he knew that delivery in the water at Orange was for the purpose either of barging the lumber to ships' side or towing it down. No local lumber business is done at Sabine. Sabine Tram Company never shipped a foot of lumber there for local delivery. No witness in the case has ever heard of a local shipment to Sabine. To the contrary, the Court of Civil Appeals finds:

"The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine."

Prior to the beginning of the shipments from Ruliff under the contract, W. A. Powell Company, Limited, had chartered three boats to transport this lumber from Sabine, the port of trans-shipment, to Europe. Two of these boats were at the dock, waiting for the arrival of the lumber. Prior to the arrival of any of these shipments at Sabine, a blanket policy of insurance had been taken out upon the lumber covered by the contract, which attached as soon as W. A. Powell Company, Limited, secured title to the lumber, and covered its transit to Europe. When the carriage of the lumber began from Ruliff, on the Texarkana & Ft. Smith Railway, it moved upon way-bills prepared by the employees of that company at Ruliff, upon each of which was stamped or written the words "interstate," and "For Export to Europe," showing that it was known to the initial carrier that from the instant the transit began it was intended for export. It is argued that Sabine Tram Company is not bound by these documents, to which it was not a party, but the question is pertinent, how did the agent of the Texarkana & Ft. Smith Railway Company at Ruliff know that this was export stuff, unless advised by the exporter to that effect? The designation of this traffic in the way-bill as interstate traffic or foreign traffic is perfectly explained by the fact that, up to August 6, 1906, there had been in effect a nexport rate of 4 cents per hundredweight, and the Sabine Tram Company believed that this rate was still effective, and was under the impression that the shipments were moving under this rate; that upon the arrival of the cars at Sabine, it claimed the benefit of this rate, and when the agents of the T. & N. O. R. R. Company erroneously undertook to charge on the first seven cars a 6-cent per hundredweight rate, through Flannagan, who was acting for both parties at Sabine, they protested against the payment of 6 cents, and demanded the benefit of the 4-cent export rate. Flannagan demanded and received all of the special privileges which were attached to the export rate. The local station of Sabine is situated about one-half mile from the docks and wharves of the Texas & New Orleans Railroad Company at that point. If local delivery had been intended under the local rate of the Texas Railroad Commission, an accessory charge of \$1.50 per car would have been assessable, and only forty-eight hours of free time would be allowed in which the lumber could remain in the cars without

charge for demurrage. Under the rates, rules and regulations applicable to commerce intended either for export or for interstate carriage, seven days free time was allowed, and the switching charge of \$2.50 per car was absorbed in the 15-cent rate, which had theretofore been legally promulgated, filed with the Interstate Commerce Commission, and regularly published. All of these privileges accorded an export shipment were promptly demanded and obtained. It is seen, therefore, that knowing that the lumber is export stuff, knowing that it is intended for export, Sabine Tram Company delivers it to the initial carrier at Ruliff, which in some way obtains information, which it could have obtained from no other source than Sabine Tram Company, that it is intended for export, and the traffic moves in continuous transit, under this billing, from Ruliff to the ships at the wharves of the Texas & New Orleans Railroad Company at Sabine, from which it is promptly transferred into the hold of the awaiting ship, which as promptly departs with it to European
778 ports. Arriving at Sabine, Flannigan, acting under the direction of the Sabine Tram Company, demands the benefit of the export 4-cent rate, and as an incident thereto demands and receives every peculiar privilege and right which attached to an export shipment. Defendant in error, upon this proposition, makes a weak defense, and by innuendo, rather than by direct assertion, endeavors to create the impression that they were demanding a State rate when they made this demand for the 4-cent rate. This contention, however, is absolutely exposed when it is remembered that there was at that time no 4-cent State rate, and that the State rate was 6½ cents per hundredweight. In addition to this, both Walden and Flannigan constantly refer to the 4-cent rate as the 4-cent export rate, and the latter calls attention to the fact that the prior shipments purchased by the W. A. Powell Company, Limited, from Sabine Tram Company, moved out through Sabine on this same export rate. It will be remembered, also, that it was, and now is, an open question whether the rate of the Railroad Commission applicable locally between Ruliff and Sabine was 6½ cents or 12½ cents, and Sabine Tram Company had, at the time the demand for the 4-cent rate was made, an obvious motive in treating this shipment as an export shipment, and not a local shipment. That the transit from Ruliff to ships' hold was unbroken and continuous is not disputed. Flannigan (Statement of Facts, page 50) says:

"The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff, and were switched up to the wharves and slips without being unloaded at the local station. They were all unloaded at the slips, switched up there and unloaded there. I know
779 that it was a continuous movement right through the local station at Sabine up to the port of trans-shipment."

The first section of the Interstate Commerce Act provides that the act shall apply "also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of trans-shipment." The proposition is thereafter stated negatively:

"Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State and not shipped to or from a foreign country, from or to any State or Territory, as aforesaid."

The terms of this act, therefore, are perfectly clear that, although property is shipped from a point within a State to a port of transshipment in the same State, and thence to a foreign country, that, nevertheless, the initial rail portion of the carriage is foreign commerce, subject to the laws of the United States.

The Interstate Commerce Commission, in *Cosmopolitan Shipping Company v. Hamburg-American Packing Company*, 13 I. C. C., 266, decided March 9, 1908, two years subsequent to the decision in the *Texarkana Grain* case, says, after quoting the above provisions of the act:

"By this language, Congress sought to certainly exclude purely State traffic, and to as certainly include foreign traffic, even when its movement was wholly within a State. Therefore, the rates on cotton moving for export from Dallas, Texas, to Galveston, although the movement is wholly within a State, are subject to Federal regulation."

780 Again, in *Baer Brothers v. Railway*, 13 I. C. C., 329, decided April 6, 1908, it was said:

"The transportation over which Congress has control was of two kinds: (1) that between the States and Territories, (2) that between the United States and foreign countries. The Federal Government had and could have no authority over transportation which began and ended in a particular State. It would have control of transportation from the United States to a foreign country, even when the movement in the United States was entirely within a single State. If, for example, traffic was taken up at Buffalo by the New York Central, and thence carried to New York City as a final destination, this service would be entirely within the State of New York, and not subject to Federal control, but if that carriage was of property in transit from Buffalo to a foreign country, then it would fall within the purview of national supervision. The purpose of the proviso was to make plain the exact extent of the jurisdiction of the Commission. When the transportation is wholly within a State, that jurisdiction attaches; provided the carriage is a part of a through movement to some foreign country. If the movement is from one State to another, the jurisdiction also attaches. The only instance in which the Commission has no jurisdiction is where the movement is entirely within the limits of the State, and is not part of a movement to or from a foreign country."

In the case then before the Commission, the Missouri Pacific Company and the Denver & Rio Grande Company participated in what was actually a through movement from St. Louis to Leadville, via Pueblo. It was sought to avoid the through rate by charging the Colorado rate from Pueblo to Leadville upon the part of the Denver & Rio Grande. It will be specially noted that the transportation

781 from St. Louis to Pueblo was conducted by the Missouri Pacific upon a local way-bill, and that from Pueblo to Leadville it was also upon a local way-bill. The Commission says:

"It would be certainly a most remarkable conclusion to hold that the Denver & Rio Grande, by some instruction to its own connection, or by some billing arrangement upon its own line, could exempt traffic to Leadville from the operation of Federal control, and could subject traffic to stations upon either side of Leadville to that control."

These decisions of the Interstate Commerce Commission are in line with its decision in the matter "Tariffs on Exports and Imports, 10 I. C. C., 70," where it was directly held that it was the duty of carriers to publish its tariffs on articles moving through ports to foreign countries. This decision has been directly approved by the Supreme Court of the United States, in *Armour Company v. United States*, 209 U. S., 56. They are in line also with the decision of this court in *Houston Direct Navigation Company v. Insurance Company*, 89 Texas, 1. There the cotton moved on a local bill of lading from Houston to Galveston, but this court, ignoring the bill of lading, held that it was essentially interstate commerce, and not subject to State regulation. It is the same decision as was made in the case of *State v. I. & G. N. R. R.*, 71 S. W., 994, where it was held that cotton delivered to one railroad in Texas to be carried to Galveston on a local bill of lading being intended for shipment to foreign markets, was, nevertheless, a foreign shipment, and not subject to State regulation. The court expressly holds:

"This court has formerly held that the form of the bill of lading does not determine the character of the shipment."

782 To the same effect is *State v. G. C. & S. F. Railway Company*, 44 S. W., 442. In that case, the shipper undertook to avoid the interstate rate to Kansas City by availing himself of the local rate into Fort Worth, and applied for cars for that purpose. The carrier offered to furnish the cars, with the understanding that if the sheep were stopped at Fort Worth, the Texas Commission rate would be applied, but if sent beyond the State, the interstate rate from point of origin to destination would be collected, and refused to furnish the cars upon any other agreement. The suit being brought for penalties for refusal to furnish the cars, it was held that the company was justified in refusing to furnish same. What difference can it make if the carrier had actually furnished the cars, carried them to Ft. Worth, and thence to the interstate point, and then collected the interstate rate?

In *State v. Southern Kansas Railroad Company*, 49 S. W., 252, the court holds that where a carrier transports freight from a point in another State under contract for its delivery f. o. b. cars of Texas railway to be shipped to another point in Texas, the last carrier is engaged in interstate commerce, and not subject to the State Railroad Commission's regulation.

All of these cases involve directly the proposition that the bill

of lading does not control, and that the essential nature of the commerce determines whether or not it is subject to State or Federal regulation. Many of them quote with approval the case of *Cutting v. Navigation Company*, 46 Fed. Rep., 641. In order to evade an interstate rate, certain fruit-growers in Florida shipped on local bills from point of origin in the State of Florida to another point within the State, and thereafter shipped to interstate points on other and different bills of lading. The carriers collected the interstate rate from point of origin to ultimate destination. Suit was brought for the overcharge, and Judge Pardee held that the device of a local bill of lading could not change the essential nature of the traffic. He says:

"The difference in the transaction of the business was solely in calling for a local bill of lading, instead of a through bill, the interposition of a forwarding agent, and in paying the charges demanded under protest."

The court called attention to the fact that there was no local market at the end of the transit under the local bill, and that, except for the interposition of the local bill of lading, there was no change in the manner of doing the business as it had been before on interstate bills; that the goods were not unloaded, the bulk not broken, nor the cars delayed to any extent. He says, quoting from case of *The Daniel Ball*, 10 Wall., 557:

"Whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State, and some acting through two or more States, does in no respect affect the character of the transaction to the extent in which each agency acts in that transportation is subject to the regulation of commerce."

In many respects, the *Cutting* case is on all-fours with the case at bar. The local point is not a market. In this case it is uncontroverted that no lumber is ever shipped to Sabine locally. It is also identical with the case at bar, in that it constituted a frank and undisguised attempt to evade the Federal regulation.

The case of *T. & P. Railroad v. Taylor*, 118 S. W., 1097, by the Ft. Worth Court of Civil Appeals, it is true, holds that a shipment locally from Colorado City to El Paso, where the consignor intended to ultimately ship to Mexico, and did ship to Mexico, was a local shipment, subject to State regulation. The Supreme Court has, however, granted a writ of error in that case upon the proposition that the shipment constituted foreign commerce.

We think, therefore, that in view of these decisions, neither the Supreme Court of Texas nor the Supreme Court of the United States intended to hold, or did hold, in the *Texarkana* grain rate case, that the essential nature of commerce could be changed by so flimsy a device as a local bill of lading, but that the law, as determined by this court and by the Federal courts, has been and is that where the commerce moves in continuous transit from a point within a

State to another State, or to a foreign country, that the character of that commerce is determined by the actual facts of the case, and cannot be changed by arbitrary or mechanical devices. Thus, in the case of *Armour v. United States*, 209 U. S., 56, decided long subsequent to the *Texarkana* case, the Supreme Court of the United States says:

"The purpose of Congress to embrace the whole field of interstate commerce is made apparent by the exclusion only of wholly domestic commerce in the last clause of section one of the original act of 1887, and in the declaration of the scope and purpose of the act declared in its title. There is no attempt in the language of the act to exempt such foreign commerce as is carried on a through bill of lading; on the contrary, the act in terms applies
785 "to the transportation of property shipped from any place in the United States to a foreign country, and carried from such place to a port of trans-shipment.

"What reasonable ground is there for supposing that Congress intended to exercise no control over such commerce if it happens to be billed through to the foreign port? Such construction would place such important commerce shipped in the United States to a port for trans-shipment abroad wholly outside the restrictions of the law, and enable shippers to withdraw such commerce from the regulations enforced against other interstate commerce by the expedient of a through bill of lading. Take the present case. The through rate is obtained by adding the ocean rate to the inland rate. There is no contractual relation between the railroad carrier and the ocean carrier. The ocean rate is uncertain and variable, depending upon the time of sailing and available space. The accommodation for ocean shipment was obtained by the shipper, and by it made known to the inland carrier. We think the language of the statute, read in the light of the manifest purpose of its passage, shows the intent of Congress to bring interstate commerce within the control of the provisions of the law up to the time of ocean shipment. This construction is reinforced by the broad provisions of Sec. 6 of the act as to publishing schedules, showing rates, fares and charges, and filing the same with the Interstate Commerce Commission. That such rates, notwithstanding through bills of lading, were subject to the provisions of the act, was held, upon full consideration, and rightfully, as we think, by the Interstate Commerce Commission. *Re Tariffs v. Export and Import Traffic*, 10 I. C. C. Rep., 55."

A further recent case upon the exact proposition here involved is that of the *Railroad Commission of Louisiana v. Texas & Pacific Railway Company*, 144 Fed. Rep., 68. In that case the Railroad Commission of Louisiana had prescribed a local rate from Louisiana points to New Orleans upon wooden staves. There was also a
786 regularly published export rate upon the same articles. The shipper having billed in locally to New Orleans staves that were thence exported, the carrier collected the interstate rate, and suit having been ordered for penalties for non-observance of State rate, the carriers obtained an injunction against the prosecutions for

their collection of penalties upon the ground that the commerce was export traffic, and not subject to the regulations of the State of Louisiana. On appeal to the Circuit Court of Appeals for the Fifth Circuit, the order granting the injunction was affirmed.

Reference to authorities might be multiplied, but we believe it can be safely said that with the exception of the opinion of the Court of Civil Appeals which is here involved, and perhaps one or two other cases decided under a misapprehension of the holding in *G. C. & S. F. v. the State*, above referred to, no authority can be had for the proposition that the essential nature of commerce can be controlled by a mere device in bills of lading or otherwise, and that, as said by the Supreme Court of the United States, in *Swift & Company v. U. S.* 196 U. S. 390:

"Commerce among the States is not a technical and legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one State, with the expectation that they will end in transit after purchase in another, and when, in effect, they do so with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical and constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

We say, therefore, that in this case the facts undoubtedly show that both parties, prior to, and at the inception of, the transit, knew and intended that the lumber should move in continuous transit to a foreign port; that it did so move; that it moved under billing showing that it was intended to so move; that the consignor demanded an export rate; that the purchaser demanded and received export privileges; that it moved without interruption from the point of origin into the hold of the ships that awaited its arrival at the port of trans-shipment, ships chartered prior to the beginning of the movement of the lumber for the very purpose of transporting it to European ports, and that to say that, under such circumstances, the character of this commerce could be changed by the trifling interposition of a local bill of lading, is to trifle with a great question, and that the practical application of such a principle will produce endless conflict between the State and Federal jurisdictions, and reduce commerce in these United States to a state of chaos.

Thirteenth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' sixteenth assignment of error, which is as follows:

"The court erred in assuming and finding, as a matter of law, that the commerce affected by the shipments in controversy herein was intrastate commerce, and not foreign commerce, such matter being an issuable fact under the evidence herein, to be determined by the jury."

Statement.

The trial court, in its charge to the jury, in the first paragraph thereof, instructed them, as a matter of law, that the shipments involved in the suit constituted intrastate commerce, and not foreign commerce, and that the rate fixed by the Texas Railroad Commission applied.

Argument.

The facts hereinabove quoted and referred to show, in addition to all of the circumstances proving that the commerce was intended for export, and was so mutually known and intended both by Sabine Tram Company and W. A. Powell Company, Limited, that upon the arrival of the stuff at Sabine, Flannagan, acting as the agent of both parties, demanded that the delivering carrier, the Texas & New Orleans Railroad Company, apply the export rate of 4 cents per hundred pounds, which had been in force prior to August 6, 1906. He did this under positive instructions from Walden, the manager of the Sabine Tram Company. That he made demand for the old export rate is clear, for three reasons: First: Both Walden and Flannagan constantly refer to it in their conversations and letters as the 4-cent export rate. It will be remembered, in this connection, that they had exported lumber prior to this time on that rate, and both of them thought that this shipment would move under that rate. This explains also how it comes about that the way-bills were stamped at Ruliff with the word "Interstate," and "For Export to Europe," because the agents of the Texarkana & Ft. Smith at that point could obtain that information from no other source than the consignor. Second: There was no State rate of 4 cents then in effect. The only State rate applicable was either the 6½ cents or the 12½ cents rate, and, therefore, in demanding the 4-cent export rate, Walden and Flannagan could not have had in mind any State rate. Third: Coincident with the demand for a 4-cent export rate, Flannagan demanded and received all of the peculiar incidents and privileges belonging to export traffic, including delivery at the wharves, without the payment of switching charges of \$2.50 per car and seven days free time, instead of forty-eight hours free time. Looked at from the most favorable standpoint for defendant in error in this case, it, at least, was a question of fact for the jury to determine, under these facts, whether this was intended by the shipper as a local or an export shipment. Suppose, for the sake of argument, we concede the extraordinary proposition announced in this case, that the intention of the shipper can determine the essential character of commerce, certainly where the shipper himself demands the application of an export rate, and all the privileges incident to an export rate are given upon the demand of the joint agent of the consignor and consignee, it at least becomes a question of fact whether he intended the State

as the export rate to apply. The facts of the case are: That, at the time of this shipment, the Sabine Tram Company was under the impression that the export rate of 4 cents per hundredweight, which had been in effect prior to August 6, 1906, applied, and they intended to take advantage of that rate. Finding to its surprise that a new rate of 15 cents per hundred pounds was legally in effect, it quickly changed its front, and undertook to make the contention that, by reason of the naked fact that the lumber had moved upon a local bill of lading, it was an intrastate shipment, and subject to the 6½-cent rate.

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Fourteenth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' seventeenth assignment of error, which is as follows:

"The court erred in finding, as a matter of law, that the Railway Commission of Texas rate, applicable to the shipments involved herein, was six and one-half cents per hundred pounds, and not twelve and one-half cents per hundred pounds, from Ruliff, Texas, the point of origin, to Sabine, Texas, on the Texas & New Orleans Railroad, the uncontradicted evidence showing herein that the lawful rate, under the rules and regulations of the Railway Commission of Texas, if said shipments were domestic or intrastate commerce, was, at the time of said shipments, twelve and one-half cents per hundred pounds, and not six and one-half cents per hundred pounds."

Fifteenth Specification of Error.

The Court of Civil Appeals erred in overruling and failing to sustain petitioners' eighteenth assignment of error, which is as follows:

"The court erred in assuming and finding as a matter of law that the lawful Commission rate in effect at the times involved herein, and applicable to the shipments involved in this controversy, was 6½ cents per hundred pounds, from Ruliff, Texas, the point of origin, on the line of the Texarkana & Ft. Smith Railway Company, defendant, to Sabine, Texas, a station on the line of railway of the Texas & New Orleans Railroad Company, defendant, and not 12½ cents per hundred pounds, the question as to what was the lawful rate in force under and by virtue of the orders of the Railway Commission of Texas being an issue of fact to be determined, under the evidence in this case, by the jury."

791 *Statement Under Two Preceding Specifications of Error.*

Petitioner, Texarkana & Ft. Smith Railway Company, specially pleaded that the rate of the Railroad Commission of Texas applicable to the shipments in controversy, from Ruliff to Sabine, was 12½ cents per hundred pounds, and not 6½ cents, as contended by defendant in error. (Tr., p. 73.)

Petitioners offered in evidence the class and commodity tariffs of the Railroad Commission of Texas, as embraced in its fifteenth annual report, and dated October 31, 1906, as follows:

"Fifteenth Annual Report of the Railroad Commission of the State of Texas.

"OFFICE OF THE RAILROAD COMMISSION OF TEXAS.

"AUSTIN, TEXAS, October 31, 1906.

"Class and commodity tariffs of the Commission, which are now in force, are embraced in Appendix A:

"Appendix A, page 65.

"Showing all tariffs made by the Commission in the form in which, at the date of this report, they existed, all matter altered or supplanted by amendment having been eliminated."

"T. & N. O. Authority No. 47, effective March 3, 1900: Rates for the transportation of lumber and articles taking lumber rates in carload lots, from all points on the Texarkana & Fort Smith Railway, south of the Louisiana-Texas State line to all stations, on the Galveston, Harrisburg & San Antonio Railway, Houston & Texas Central Railroad and the Texas & New Orleans Railroad, the same as now in effect from Beaumont, except that the minimum through rate shall be 12½ cents per hundred pounds." (See Statement of Facts, pp. 82-83.)

792 Defendant in error offered in evidence circular No. 1169 of the Railroad Commission of Texas, as follows:

"General Notice Circular No. 1169.

"Hearing July 21, 1900.

"AUSTIN, TEXAS, July 23, 1900.

"It is hereby ordered that the following rates be adopted for the transportation of lumber and articles taking lumber rates in carload lots, minimum rates 240,000 pounds per car, from points on the Texarkana & Fort Smith Railway north of Beaumont to the Sabine River, to points specified below:

"Rates: To Beaumont, Port Arthur, Sabine Pass, 4 cents per hundred pounds. To stations south of Houston on the Gulf, Colorado & Santa Fe, and the Galveston, Houston & Henderson, and Galveston, Houston & Northern, except Galveston, 8¾ cents per hundred pounds. To all stations on the Missouri, Kansas & Texas Railway of Texas, except Trinity and Sabine branch, same rates apply from Beaumont to said stations.

"This order shall take effect August 13, 1900." (Statement of Facts, pp. 81-82.)

Defendant in error also introduced in evidence Authority No. 7680, 102 and 118, as shown on page 188 of the Railroad Commission's report of 1906, as follows:

"Effective May 1st and August 1, 1902; September 1, 1903, and January 13, 1904:

"Rates in cents per hundred pounds to apply on pine lumber and articles taking pine lumber rates, between points on the Texas & New Orleans Railroad, Stilson & East, also Turney & South." (here follows tables showing distance in miles and rates).

To this order is attached the following exceptions, to wit:

"Exceptions: (1) The following rates shall apply to Sabine and Sabine Pass, rates to or from intermediate points not to be affected from Beaumont, 2:5." (S. F., pp. 62-63.)

793 Defendant in error also introduced in evidence, from page 65 of the report of the Railroad Commission of Texas for the year 1906, the following:

"Appendix A.

"General rules governing the application of all rates: The rate between two given points shall not in any case exceed the sum of the rates applying between such given points and a point intermediate." (S. F., p. 62.)

In connection with this evidence thus introduced, Mr. Arthur, the chief rate clerk of the Railroad Commission of Texas, testified as follows:

"In connection with Authority No. 76, 80, 102 and 118 in the appendix to the Railroad Commission's report in the year 1906, the term 'Authority' is used instead of 'circular' or 'tariff,' because it is a special document, and doesn't amend a general tariff or contain a general order for application by all railroads. There are some circulars, we give the name 'circular' to them instead of 'authority,' and are in response to applications. These circulars are issued for those. The general rule is to give an authority number. We have a separate record for authorities to those of applications, but an application, when made by a railroad for a certain rate, the term used to designate that rate, while fixed, is generally 'authority,' but if it is for general application or to amend a fixed tariff, we give it a circular number, but if it is a special rate in itself, the general rule is to designate and term it an authority, giving its number."

794 These excerpts from the testimony constitute the evidence from which the court and jury had to determine which was the lawful State rate applicable to shipments of lumber in carload lots from Ruliff to Sabine. It appears from the order of the Railroad Commission, as found on page 184 of the fifteenth annual report of the Railroad Commission of Texas, which purports to give all of the rates, tariffs, rules and regulations of that body effective on October 3, 1906, that T. & N. O. Authority No. 47, which became effective March 3, 1900, prescribed a minimum through rate from all points on the Texarkana & Fort Smith Rail-

any south of the Louisiana-Texas State line to all points on the Texas & New Orleans Railroad of $12\frac{1}{2}$ cents per hundred pounds. Defendant in error contends that the general schedule of rates applicable to the Beaumont & Fort Smith Railway, and the giving of minimum that line alone, and also the exception above quoted, making a rate of $2\frac{1}{2}$ cents from Beaumont to Sabine, and applying thereto the general rule that the through rate should not exceed the sum of the locals, will make a $6\frac{1}{2}$ -cent rate from Ruliff, which is a point on the Beaumont & Ft. Smith Railway, south of the Sabine River in Texas, the correct through rate. Here, then, we have a through rate constructed from the application of the two general local tariffs by the use of the rule mentioned, as opposed to Special Authority No. 67, authorizing a $12\frac{1}{2}$ -cent rate to Sabine. We have in effect on October 21, 1905, a special order of the Railroad Commission of Texas making a minimum through rate from points on the Texas & Ft. Smith Railway south of the Louisiana-Texas line to all points on the Texas & New Orleans Railroad of $12\frac{1}{2}$ cents per hundred pounds. The rule is well settled that where there is a general law in effect, and at the same time a special law is in effect governing any part of the subject-matter of the general law, the matter embraced within the special law is taken out from the operation of the general enactment. By what process, then, does the court below, or does the Court of Civil Appeals, find, as a matter of law, that this special order of the Railroad Commission of Texas, prescribing a $12\frac{1}{2}$ -cent rate between these particular points is not affected, and that the constructive rate of $6\frac{1}{2}$ cents, found by adding the local under the general tariff from Ruliff to Beaumont and the local from Beaumont to Sabine of $2\frac{1}{2}$ cents, exclusively applies. Surely, if, on the record, without explanation by outside testimony, where we have a general order establishing a schedule of rates on each of two lines, and the through rate can only be obtained by the application of the general rule that it shall not exceed the sum of the locals, and at the same time we find a special and specific order which establishes by special rule the $12\frac{1}{2}$ -cent rate between the two points involved, by all rules of construction, the special rate must obtain. We contend, therefore, that, on the record, it was the duty of the court below and of the Court of Civil Appeals to have found, as a matter of law, that the $12\frac{1}{2}$ -cent rate applied. If, on the record, it was uncertain as to which rate applied, it became the duty of the plaintiff to have adduced evidence showing which rate did actually apply. This might have been done by the introduction of testimony showing the course of practice of each carrier in the premises, and that of the Railroad Commission, themselves having it to the jury under proper instruction from the court, to determine which was the legal rate, if any there was. The court below, however, and the Court of Civil Appeals, assume that the constructive rate was the only legal rate, in the face of a special order prescribing a particular rate between the particular points. Without the introduction of any order or evidence, the naked legal presumption that the special regulation must prevail over a rate constructed from two local rates by the aid of the

general rule referred to. We submit, therefore, either that it was the duty of the court to hold, as a matter of law, that the 12½-cent rate was applicable, or to have submitted the proposition to the jury under appropriate instructions, to determine which of the two rates was the legal rate.

IV.

For each and all of said errors, as set forth in the above and foregoing specifications of error, your petitioners pray for writ of error from this Honorable Court to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston, to the end that the judgment of said Court and of the District Court of Jefferson County be revised and here reversed and rendered in behalf of your petitioners, or, in the alternative, that said cause be reversed and remanded for a new trial in said District Court of Jefferson County, Texas.

Respectfully submitted,

TEXARKANA & FT. SMITH RAILWAY
COMPANY,

By GLASS, ESTES & KING, *Attorneys.*

TEXAS & NEW ORLEANS RAILROAD
COMPANY,

By PARKER, HEFNER & ORGAIN,
BAKER, BOTTS, PARKER & GARWOOD,
Attorneys.

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CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, do hereby certify that the foregoing sixty-eight (68) pages contain a true and correct copy of the original petition for writ of error in App. No. 6504, Texas & New Orleans Railroad Company and Texarkana & Ft. Smith Railway Company, Plaintiffs in Error, vs. Sabine Tram Company, Defendant in Error, now on file in this office.

Witness my hand and the seal of said court, at the City of Austin, this the 20th day of June A. D. 1910.

[Seal Supreme Court of the State of Texas.]

F. T. CONNERLY,
Clerk of the Supreme Court of Texas.

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In the Supreme Court of Texas,

TEXAS & NEW ORLEANS RAILROAD COMPANY and TEXARKANA &
FT. SMITH RAILWAY COMPANY, Plaintiffs in Error,

vs.

SABINE TRAM COMPANY, Defendant in Error.

Motion for Rehearing.

To the Honorable Supreme Court of the State of Texas:

Your petitioners, Texas & New Orleans Railroad Company and Texarkana & Ft. Smith Railway Company, plaintiffs in error, re-

respectfully move the court that its judgment herein rendered and entered on April 20 A. D. 1910, refusing the application of plaintiffs in error for a writ of error herein be set aside and that a rehearing herein be granted and for cause say:

I.

The court erred in refusing a writ of error herein, for that the Court of Civil Appeals erred herein in overruling and failing to sustain appellants' third assignment of error, which is as follows:

"The court erred in overruling and failing to sustain special exception contained in paragraph four of the amended original answer of the defendant, the Texas & New Orleans Railroad Company, and the special exception of the defendant Texarkana & Ft. Smith Railway Company, to the effect that the statute providing for penalties for overcharges in demanding and receiving from plaintiff a rate in excess of that fixed by the Railroad Commission of Texas, does not permit the accumulation of penalties thereunder, and that, under the allegations in the plaintiff's petition, it was entitled to recover only one penalty of not less than \$125.00 nor more than \$500.00, and that it could only recover one penalty for all alleged overcharges up to the time of the filing of its suit."

II.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain appellants' fourth assignment of error, which is as follows:

"The court erred in failing and refusing to give special charge No. 2, asked by defendants, to the effect that plaintiff in no event can recover more than one penalty of not less than \$125.00 nor more than \$500.00 in this cause."

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III.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain appellants' sixth assignment of error, which is as follows:

"The court erred in holding that plaintiff, if entitled to recover actual damages as for an overcharge, was entitled to recover penalties in the sum of not less than \$525.00 nor more than \$2,500.00, and in so charging the jury, for the reason that the uncontradicted testimony herein, and the law under which plaintiff seeks to recover do not permit the recovery of more than one penalty of not less than \$125.00 nor more than \$500.00 in any event."

IV.

The court erred in refusing to grant a writ of error herein, and in failing to sustain the fourth specification of error made by petitioners to the effect that the Court of Civil Appeals erred in sustaining the third cross assignment of error made by Sabine Tram Company, defendant in error, and erred in its judgment herein in re-

affirming and affirming the judgment of the District Court of Jefferson county and entering judgment against petitioners for twenty-four penalties of \$125.00 each aggregating \$3,000.00, for the reason that under the law conceding the traffic moved to be domestic or intrastate commerce, defendant in error was entitled to recover only one penalty of not less than \$125.00 nor more than \$500.00 and there having been but five collections of alleged overcharges, in no event could there be more than five penalties recovered as found by the trial court and for which judgment was entered.

Argument.

The controversy herein grows out of a shipment of thirty-three cars of lumber made on twenty-four different days. To these shipments the carriers applied the interstate rate of 15 cents per hundred pounds. The shipper contended that the domestic or state rate prescribed by the Railroad Commission of Texas of 8½ cents per hundred pounds was the legal rate and sued for the overcharges and for a separate penalty of not less than \$125.00 nor more than \$500.00 for each of the twenty-four days. Payment of the freight charges demanded by the carriers was made in five separate payments, to-wit: on October 17, October 18, October 31, November 12 and November 17, 1906. The carriers contended, first, that but one penalty could be recovered under the statute for all the transactions up to the time of the trial or in other words, that a shipper could not stand by, forbear to sue and accumulate penalties until the carrier was bankrupted thereby. In the alternative, it was contended under the direct authority of the holding in *Standard Oil Company vs. U. S.*, 164 Fed. Rep., 376, that inasmuch as the freight charges were paid in five separate payments, there could be but five separate acts of extortion and, therefore, but five violations of the statute. The trial court adopted the latter view and in accordance with its instructions, a verdict was rendered for five penalties. In the Court of Civil Appeals, defendants in error urged a cross-assignment of error to this action of the trial court and asked for judgment for twenty-four penalties, which assignment the Court of Civil Appeals sustained and reformed the judgment of the trial court allowing twenty-four penalties in the sum of \$125.00 each aggregating \$3,000.00. The importance of this question, its intensely practical nature, the fact that the opinion of the Court of Civil Appeals in effect overrules the prior decisions of the Texas courts and is against the overwhelming weight of authority of both State and Federal decisions, induces these petitioners to believe that in the examination of the weightier and more important questions involved in this controversy has, perhaps, induced this honorable court to withhold from these propositions the consideration which their importance demands. The opinion of the Court of Civil Appeals failing as it does to suggest any sufficient basis for a departure from the well established precedence, suggests that there should, in the interest of a proper determination

of the law, be had from this court a statement of the principles involved and a specific determination of the point decided.

801 Article 4573 R. S., defines extortion to be the charging, collecting, demanding or receiving of a greater rate, charge or compensation for the transportation of freight than the rate fixed by the Railroad Commission. For such unlawful act, the party offending is liable to the State in a penalty not less than \$100 nor more than \$500.

By Article 4575, he is liable to the individual aggrieved in a penalty of not less than \$125 nor more than \$500. The uncontradicted evidence shows that the freight charges in this case were demanded and collected at five different times prior to the institution of this suit. Article 4575 provides that for such extortion the party injured can recover a penalty. There is absolutely nothing in the statute which tends to indicate that a penalty can be collected for each car or each shipment or each bill of lading, but it provides only that when rates in excess of those provided by the Railroad Commission have been collected, the aggrieved party can recover a penalty. The only reason attempted to be offered for the strange construction of this penal act is that under Article 4581 it is provided that:

"All penalties accruing under this chapter shall be cumulative of each other and a suit for or a recovery of one shall not be a bar to the recovery of any other penalty."

The meaning of this statute is so clear that it would not seem to be necessary to discuss it and we are unable to follow the reasoning which could apply it to the case at bar. Under the provisions of the Railroad Commission Act, a penalty accrues to the State for an act of extortion. A penalty likewise accrues to the individual who suffers injury. If the extortionate rate is applied to one individual and a lower rate to another individual, an act of extortion becomes also an act of discrimination for which a separate penalty is provided. Under Article 4581, therefore, which provides that these penalties shall be cumulative, there might be a recovery against the same carrier for the same act, first, in behalf of the State; and, second in behalf of the individual and neither recovery would bar the other; so, also, there might be a recovery in behalf

802 of an individual, first, for extortion and, second, for discrimination and neither would bar the other. This, however, has no application to the case at bar and does not justify the recovery of numerous penalties for a single extortion. It is true that the shipments were made on twenty-four different days; that is to say, there were twenty-four different shipments, but it is equally true that there were thirty bills of lading. Why arbitrarily select twenty-four instead of thirty to assess penalties? Is there any more reason why the one should be taken than the other? Again, each bill of lading might include more than one car. The rate involved is a carload rate. Why not assess the penalty, if we are to travel outside of the phraseology of this penal statute, upon each car? The rate charged is assessed upon each one hundred pounds in each car. There is an overcharge then on each one

hundred pounds and following the reasoning of the Court of Civil Appeals, it would be equally logical to impose as many penalties as there were one hundred pounds in the entire thirty-three cars shipped on thirty separate bills of lading. Whatever may be the correct rule as may be determined by this court, it is perfectly apparent that that laid down by the Court of Civil Appeals is incorrect. It is far more logical to take as your basis for punishment either the thirty separate bills of lading or the thirty-three cars or the number of hundred weights in the thirty-three cars, than to arbitrarily accept the time division adopted by that court and hold that merely because the shipments moved on twenty-four different days, there must be twenty-four different penalties. According to this theory, if the thirty-three cars moved in one solid train, there would be one penalty. If they moved in two trains, there would be two penalties, notwithstanding, there might have been thirty-three different bills of lading and thirty-three different overcharges on each different bill. We respectfully submit that this is chaotic

803 and that litigants have an interest in the clear determination of the law. While we believe that the statute and the decisions are clear to the effect that but one penalty is recoverable, should the court take a different view, then it is submitted that there having been but five payments and, therefore, but five collections of overcharges, that in this particular the judgment of the District Court of Jefferson county was the extreme limit of the law. It is submitted, therefore, that the District Court and the Court of Civil Appeals were each in error in permitting a recovery of more than one penalty and that in addition thereto the Court of Civil Appeals was in error in reforming the judgment so as to permit the recovery of twenty-four penalties.

V.

The court erred in refusing a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain appellant's fifth assignment of error, which is as follows:

"The court erred in overruling and failing to sustain special exception of the defendant Texas & New Orleans Railroad Company, as contained in paragraph five of the amended original answer of said company, to the effect that if Article 4575 of the Revised Statutes of the State of Texas, being Section 17 of the Act of April 3d, 1891, creating a Railway Commission, and under the provisions of which this action is brought, permits the cumulation of penalties for alleged successive acts of overcharge, committed prior to the institution of the suit, that then, and in that event, the same is invalid and void as in contravention of Section 13, Art. 1, of the Constitution of the State of Texas, which provides that 'excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law'. And in contravention of the fourteenth amendment to the Consti-

tution of the United States, which provides: 'Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.'

VI.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain appellants' ninth assignment of error herein as follows:

"The court erred in sustaining special exception No. 7, contained in plaintiff's first supplemental petition, filed herein January 20, 1908, to Paragraph 18 of the first amended original answer of defendant, the Texas & New Orleans Railroad Company, as follows:

804 "7. Plaintiff further specially excepts to the eighteenth paragraph of said answer, and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railway Commission of Texas in an action between the Sabine Tram Company, plaintiffs herein, a private party, and the railway companies affected by said rates, in violation of Art. 4564 of the Revised Statutes of the State of Texas, the same being Section 5 of an Act passed by the twenty-Second Legislature of the State of Texas, entitled, 'An Act to establish a Railway Commission for the State of Texas', etc., and appearing on page 58 of the Acts of 1891, for the reason that in an action to recover penalties for an alleged violation of the rates, orders, rules and regulations of the Railway Commission of Texas, it is admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.'"

VII.

The court erred in refusing to grant a writ of error herein for that the Court of Civil Appeals erred in overruling and failing to sustain appellants' twenty-third assignment of error, which is as follows:

"The court erred in permitting a recovery for penalties, under the facts in this case, for the reason that, under the Constitution and laws of this State, no penal act which is so indefinitely framed and of such doubtful construction that it cannot be understood, either from the language in which it is expressed, or from some other written law of the State, can be enforced."

VIII.

The court erred in refusing a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain pe-

petitioners' thirty-first and thirty-second assignment of error, which are as follows:

"Thirty-first Assignment of Error: The court erred in holding, as a matter of law, that the action of defendant, in applying the Interstate Commerce Commission rates, regularly established, filed and published by the defendants, to the shipments in controversy herein, instead of the rates prescribed by the Railway Commission of Texas, if a mistake, was a mistake of law, and not of fact, and in refusing to submit to the jury the issue as to whether the defendants herein, in applying the rates in controversy, were acting under an honest belief that the rates applied to the shipments in controversy were the lawful rates, and in failing and refusing to give special charge No. 5, requested by defendants, to the effect that if the defendants, their servants and agents, believed, in good faith, that the shipments in controversy herein were foreign commerce, and, so believing, applied said rates in good faith; that the same constituted a mistake of fact, which would excuse defendants from the infliction of the penalties sued for.

805 "Thirty-second Assignment of Error. The court erred in failing and refusing to give special charge No. 5, asked by the defendants, to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company, situate adjacent to the station of Sabine, Texas, on a road of the latter company, when intended for export to foreign countries, other than Mexico, and that the rates charged upon said shipments involved in this controversy were collected under and in accordance with the interstate tariffs, so filed; and that, if they believed from the evidence that the defendant, the Texas & New Orleans Railroad Company, and its agent, acting in that behalf, believed, in good faith, and acting upon reasonable grounds for that belief, that the shipments in controversy were foreign shipments, and intended for export to foreign countries, other than Mexico, then, in that event, they should find for the defendants upon the issue of penalties theretofore submitted by the court."

IX.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioner's thirteenth assignment of error, which is as follows:

"The court erred in permitting the recovery of penalties in any amount herein, and the verdict and judgment rendered herein is erroneous, in finding for plaintiff upon the issue of penalties herein, in this, that the uncontradicted testimony shows that the shipments by plaintiff declared upon, moved in a continuous and unbroken journey from Ruliff, Texas, the point of origin, through Sabine, a port of trans-shipment, to a foreign port; that prior to said shipments, defendants, had promulgated and filed with the Interstate

Commerce Commission tariffs of rates applicable to such movements, and that defendants actually applied only such rates to such movements that defendants, under An Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof, and the Act of Congress approved February 19th, 1903, commonly known as the Elkins Act, and acts amendatory thereof, was compelled, under the threat of severe penalties, to apply said tariff, and no other tariffs, and that, under the Railroad Commission act of Texas, the charging and receiving of freight charges, in excess of the rates prescribed by said Commission, is punishable by a penalty of not less than one hundred and twenty-five dollars (\$125.00) nor more than \$500.00, and that, to compel these defendants, at their peril, to decide, as a matter of law, which was the correct rate, and to punish them by the infliction of said penalties for a mistake of law, as to which was applicable, is to deprive them of their property without due process of law, and deprive them of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States."

X.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioners' nineteenth and twentieth assignments of error, which are as follows:

806 "Nineteenth Assignment of Error: The court erred in failing and refusing to give special charge No. 3, asked by defendant Texarkana & Fort Smith Railway Company, to the effect that plaintiff cannot recover any penalty against the Texarkana & Fort Smith Railway Company, and directing the jury to find a verdict in favor of that company on said issue.

"Twentieth Assignment of Error: The court erred in failing and refusing to give special charge No. 4, requested by the defendant, the Texas & New Orleans Railroad Company, to the effect that there are no facts in evidence which will justify the jury in rendering a verdict for penalties in any amount against the Texas & New Orleans Railroad Company, and instructing them to find a verdict in its favor upon that issue."

XI.

The court erred in refusing a writ of error herein, for that the Court of Civil Appeals erred in entering judgment in favor of defendant in error for the sum of \$3,000 in penalties for alleged overcharges, for the reason that the shipments in controversy constituted foreign commerce, which was not subject to the rates, rules and regulations of the Railroad Commission of Texas, and the imposition of such penalties by its said judgment is an impediment to and an interference with interstate commerce, contrary to the provisions of Section 8, Art. 1, of the Constitution of the United States, which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes", and contrary to, and in conflict with, the Act of the Congress of the United States commonly known as the Interstate Com-

merce Act, approved February 4, 1887, and acts amendatory thereof, and is a denial of, and decision against, the rights, titles, privileges and immunities claimed under the Constitution and statutes of the United States, and of authority exercised thereunder.

XII.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioners' tenth, eleventh and twelfth assignments of error, which are as follows:

"Tenth Assignment of Error: The court erred in failing to direct a verdict in favor of the defendants herein, and in failing and refusing to give special charge No. 1, requested by defendants, directing the jury to return a verdict in favor of the defendants, and each of them.

"Eleventh Assignment of Error: The court erred in rendering and entering judgment for any amount against the defendants herein, for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce, moving from a point within the United States, through a port of trans-shipment to foreign countries, and that these defendants herein, prior to said shipments, had legally established, filed with the Interstate Commerce Commission, and published schedules and tariffs of rates applicable to such shipments, and that the rates so established in said tariffs and schedules, filed and published, and were the legal rates applicable thereto.

"Twelfth Assignment of Error: The court erred in failing and refusing to direct a verdict in favor of the defendants because the evidence shows, without dispute, that when said lumber mentioned in plaintiff's petition started on its journey from Ruliff, Texas, same was destined to a foreign country, and constituted foreign commerce, and not intrastate commerce; that it was in fact shipped from Ruliff, Texas, a point in the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, to a foreign country, and was not subject to or controlled or affected by the rules, rates and regulations of the Railway Commission of Texas, and the enforcement of said rules, rates and regulations of the Railway Commission of Texas, in respect to said shipments, is, therefore, violative of Section 8, Art. 1, of the Constitution of the United States, and the Act commonly known as the Interstate Commerce Act, approved February 4th, 1887, and acts amendatory thereof."

XIII.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioners' sixteenth assignment of error, which is as follows:

"The court erred in assuming and finding, as a matter of law, that the commerce affected by the shipments in controversy herein was intrastate commerce, and not foreign commerce, such matter being an issuable fact under the evidence herein, to be determined by the jury."

XIV.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioners' seventeenth assignment of error, which is as follows:

"The court erred in finding, as a matter of law, that the Railway Commission of Texas' rate, applicable to the shipments involved herein, was six and one-half cents per hundred pounds, and not twelve and one-half cents per hundred pounds, from Ruliff, Texas, the point of origin, to Sabine, Texas, on the Texas & New Orleans Railroad, the uncontradicted evidence showing herein that
808 the lawful rate, under the rules and regulations of the Railway Commission of Texas, if said shipments were domestic or intrastate commerce, was, at the time of said shipments, twelve and one-half cents per hundred pounds, and not six and one-half cents per hundred pounds."

XV.

The court erred in refusing to grant a writ of error herein, for that the Court of Civil Appeals erred in overruling and failing to sustain petitioners' eighteenth assignment of error, which is as follows:

"The court erred in assuming and finding as a matter of law that the lawful Commission rate in effect at the times involved herein, and applicable to the shipments involved in this controversy, was 6½ cents per hundred pounds, from Ruliff, Texas, the point of origin, on the line of the Texarkana & Ft. Smith Railway Company, defendant, to Sabine, Texas, a station on the line of railway of the Texas & New Orleans Railroad Company, defendant, and not 12½ cents per hundred pounds, the question as to what was the lawful rate in force under and by virtue of the orders of the Railway Commission of Texas being an issue of fact to be determined, under the evidence in this case, by the jury."

XVI.

The court erred in failing and refusing to grant a writ of error herein, for that the testimony herein shows that the shipments in controversy constituted interstate and foreign commerce and not intrastate commerce; that the same were shipped from Ruliff, Texas, a point within the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, to a foreign country and was not subject to or controlled or affected by the rules, rates or regulations of the Railroad Commission of Texas and the enforcement of said rates, rules and regulations of said Railroad Commission of Texas in respect to said shipments and the application thereto of the rates prescribed by the Railway Commission of Texas instead of the rates legally established and filed with the Interstate Commerce Commission is in violation of section 8, Article 1, of the Constitution of the United States and the Act commonly known as the Interstate Commerce Act, approved February 4, 1887, and acts amendatory thereof.

The court erred in refusing to grant a writ of error herein, for that the judgment of the District Court of Jefferson county for alleged overcharges in the sum of \$1788.33 and for penalties in the sum of \$1785 and the judgment of the Court of Civil Appeals herein for the sum of \$1788.33 for overcharges and for penalties in the sum of \$3,000 by reason of said alleged overcharges are each erroneous in this: That the testimony herein shows that the shipments in controversy were interstate and foreign commerce and that the correct rate applicable thereto was the rate of 15 cents per hundred pounds which had theretofore been regularly filed with the Interstate Commerce Commission and published in accordance with law, and that such shipments being interstate commerce were not subject to the rates, rules or regulations of the Railroad Commission of Texas nor were petitioners liable for penalties in any sum whatsoever for failure to apply the rates of the Railroad Commission of Texas as provided in the statutes of said State and that the enforcement of said rates prescribed by the Railroad Commission of Texas in respect to said shipments by the judgment of the District Court of Jefferson county and the Court of Civil Appeals for the First Supreme Judicial District of Texas herein is in violation of section 8 of Article 1 of the Constitution of the United States which provides that, "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes"; and contrary to and in conflict with the Act of Congress of the United States commonly known as the Interstate Commerce Act, approved February 4, 1887 and acts amendatory thereof and is a denial of and a decision against the rights, titles, privileges and immunities claimed under the Constitution and statutes of the United States and of authority exercised thereunder.

Wherefore, petitioners pray that a rehearing hereof be granted and that upon such rehearing a writ of error be granted to the
810 Court of Civil Appeals for the First Supreme Judicial District of Texas at Galveston, to the end that the judgment of said court and of the District Court of Jefferson county be revised and either reversed and rendered in behalf of these petitioners or in the alternative that said cause be reversed and remanded for a new trial in said District Court of Jefferson county, Texas.

Respectfully submitted,

TEXARKANA & FT. SMITH RAILWAY
COMPANY,

By GLASS, ESTES & KING, *Attorneys.*

TEXAS & NEW ORLEANS RAILROAD
COMPANY,

By BAKER, BOTTS, PARKER & GAR-
WOOD, *Attorneys.*

CLERK'S OFFICE, SUPREME COURT.

I, F. T. Connerly, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing Twelve (12) pages contain a true and correct copy of the original motion for rehearing, on refusal of the application for writ of error, in App. No. 6504, Texas & New Orleans Railroad Company and Texarkana & Fort Smith Railway Company, Plaintiff in Error (applicants) vs. Sabine Tram Company, Defendant in Error, now on file in this office.

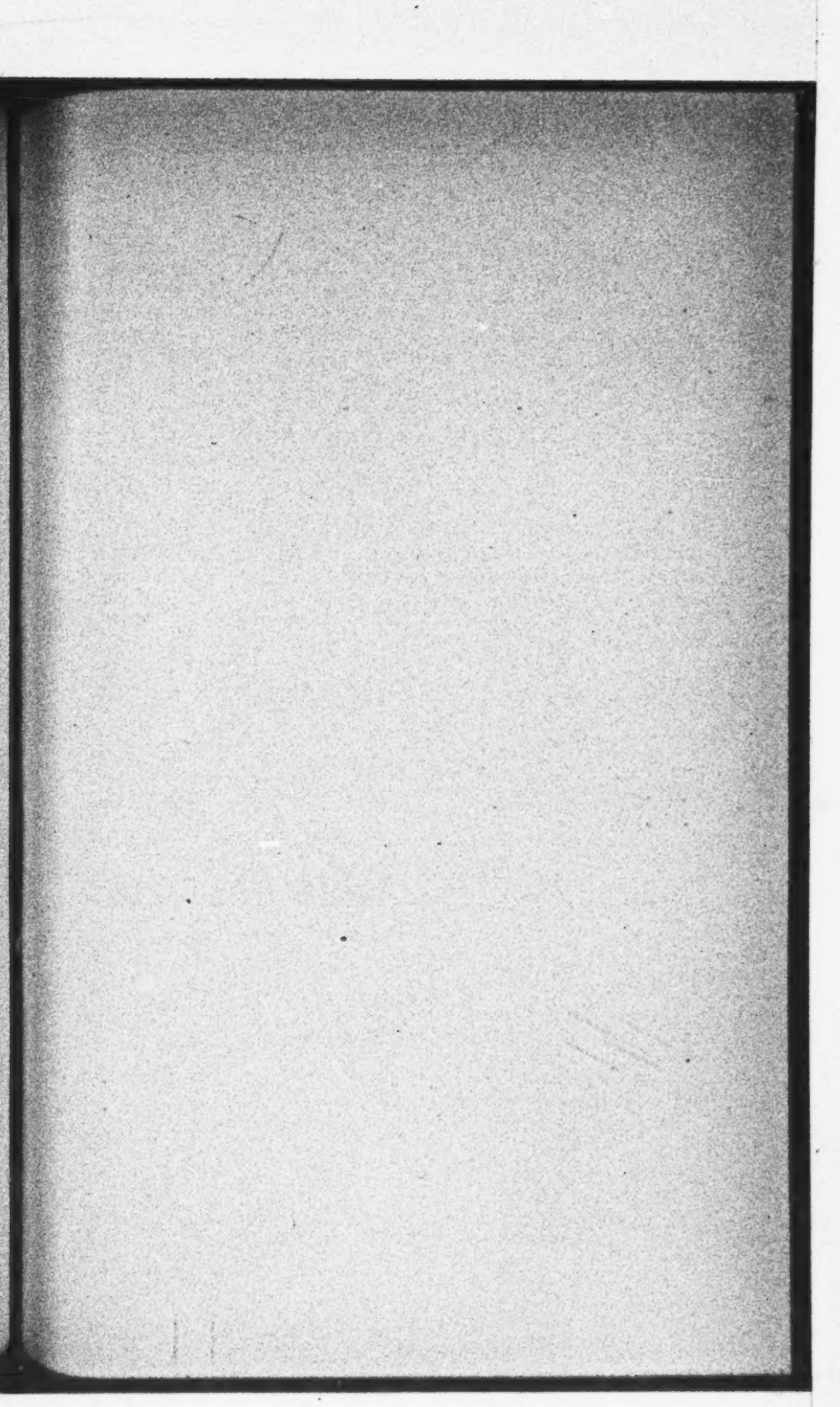
Witness my hand and the seal of said court, at the City of Austin, this the 20th day of June, A. D. 1910.

[Seal Supreme Court of the State of Texas.]

F. T. CONNERLY,

Clerk of the Supreme Court of Texas.

Endorsed on cover: File No. 22,245. Texas Court of Civil Appeals, First Supreme Judicial District. Term No. 93. Texas & New Orleans Railroad Company, Texarkana & Fort Smith Railway Company and United States Fidelity & Guaranty Company, plaintiffs in error, vs. Sabine Tram Company. Filed June 28th, 1910. File No. 22,245.



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11. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

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Supreme Court of the United States,

OCTOBER TERM, 1912.

No. 93.

TEXAS AND NEW ORLEANS RAILROAD COMPANY,
TEXARKANA AND FORT SMITH RAILWAY COM-
PANY and UNITED STATES FIDELITY AND
GUARANTY COMPANY,

Plaintiffs in Error,

VS.

SABINE TRAM COMPANY.

IN ERROR TO THE COURT OF CIVIL APPEALS
FOR THE FIRST SUPREME JUDICIAL DISTRICT OF
THE STATE OF TEXAS.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

This suit originated in the District Court of Jefferson County in the State of Texas. The petition was filed on the 18th day of February, 1907. The suit was brought by Sabine Tram Com-

pany, defendant in error, against Texas and New Orleans Railroad Company and Texarkana and Fort Smith Railway Company, plaintiffs in error, seeking to recover from the Texas and New Orleans Railroad Company and the Texarkana and Fort Smith Railway Company the sum of \$1,788.33 alleged to be due for overcharges in freight on thirty-three cars of lumber shipped by Sabine Tram Company, defendant in error, to its own order, notify W. A. Powell Company, Limited, from the station of Ruliff, in the State of Texas, to the station of Sabine, in the State of Texas, said shipments moving from the initial station of Ruliff over the line of the Texarkana & Fort Smith Railway to Beaumont, Texas, and from Beaumont over the line of the Texas & New Orleans Railroad to Sabine, Texas, it being alleged that said shipments weighed in the aggregate 2,104,000 pounds; that the legal rate applicable thereto under the orders of the Railroad Commission of Texas was 6½ cents per hundred pounds and that said railway companies, plaintiffs in error herein, wrongfully collected thereon over the protest of said Sabine Tram Company, defendant in error, 15 cents per hundred pounds, amounting to an illegal and excessive charge of 8½ cents per hundred pounds or \$1,788.33. Re-

covery was also asked for penalties for extortion in the sum of \$16,500.00, that is to say, the maximum penalty of \$500.00 allowed by Article 4575 of the Revised Statutes of the State of Texas for each of thirty-three cars of lumber transported (Record, pp. 56-62).

The suit was predicated upon Articles 4573 and 4575 of the Revised Civil Statutes of the State of Texas, which are as follows :

"ARTICLE 4573. If any railroad company subject to this chapter or its agent or officer shall hereafter charge, collect, demand or receive from any person, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the Railroad Commission for the transportation of freight, passengers or cars or for the use of any car on the line of its railroad or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion and shall forfeit and pay to the State of Texas a sum not less than \$100.00 nor more than \$5,000.00."

"ARTICLE 4575. In case any railroad subject to this chapter shall do, cause to be

done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than \$125.00 nor more than \$500.00 to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided that any such recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violation."

Plaintiffs in error defended upon the ground that the shipments involved were foreign commerce shipped from a point within the United States and carried from such point in continuous

transit through Sabine, a port of trans-shipment, to foreign countries and, therefore, not subject to the rates, rules or regulations of the Railroad Commission of Texas ; that the legal rate applicable thereto was a rate of 15 cents per hundred pounds which had theretofore been established by plaintiffs in error and regularly filed with the Interstate Commerce Commission and duly published in accordance with the Act to Regulate Commerce of the Congress of the United States, approved February 4, 1887, and acts amendatory thereof, and that, therefore, no recovery could be had by defendant in error (plaintiff in the trial court) either for such alleged overcharge or for penalties (Record, pp. 73-94).

It was further contended by plaintiffs in error that under said Article 4575 only one penalty of not less than \$125 nor more than \$500 could be recovered under the provisions of said Article 4575 (Record, p. 74).

Upon the trial of the cause, the District Court of Jefferson County charged the jury that the shipments involved constituted intrastate commerce, subject to the rates prescribed by the Railroad Commission of Texas ; that the legal rate applicable thereto under the order of said Commission was 6½ cents per hundred pounds

and that plaintiffs in error were liable to defendant in error in the sum of \$1,788.33, or the difference between the 6½ cent rate prescribed by the Railroad Commission of Texas, and the 15-cent rate legally filed, published and effective under the Interstate Commerce Act, and the jury was directed to return a verdict in favor of defendant in error for that amount with interest at the rate of six per cent. from January 1, 1907 (Record, p. 105). The court further charged the jury that the freight charges collected having been paid in five separate payments, there were five distinct acts of extortion, for which defendant in error was entitled to recover penalties in the sum of not less than \$625 or more than \$2,500; that is to say, not less than \$125 nor more than \$500 for each act (Record, p. 106).

In accordance with the instructions of the court, the jury returned its verdict in favor of the defendant in error, Sabine Tram Company, against plaintiffs in error, Texas and New Orleans Railroad Company and Texarkana and Fort Smith Railway Company, with interest at six per cent per annum from January 1, 1907, and for the sum of \$1,785 penalties, and judgment was entered in accordance therewith (Record, pp. 113-114).

From the judgment, an appeal was perfected

to the Court of Civil Appeals for the First Supreme Judicial District of Texas, at Galveston and on May 31, 1909, said Court of Civil Appeals affirmed the judgment of the trial court for the recovery of said sum of \$1,788, alleged overcharges, and reformed the judgment as to penalties, finding that inasmuch as there were twenty-four separate shipments, defendant in error was entitled to recover a penalty for each shipment and said defendant in error having by cross-assignment in that court complained of the action of the trial court in finding that it was entitled to only five penalties and consented that if the Court of Civil Appeals should hold that it was entitled to recover a separate penalty for each of the thirty-three cars or for each of the twenty-four shipments, that the said court could render judgment for the lowest penalty of \$125. The Court of Civil Appeals having sustained this cross-assignment of error, reformed the judgment in that particular and rendered judgment for penalties in the sum of \$125.00 for each of twenty-four shipments, aggregating the sum of \$3,000.00 (Record, pp. 2-17).

Within the period allowed by law, to-wit, fifteen days, plaintiffs in error, appellants in that court, filed their motion for a rehearing in said

Court of Civil Appeals (Record, pp. 17-36), which was by said court duly overruled (Record, pp. 42, 43).

Within the time permitted by law, plaintiffs in error filed their petition for writ of error with the Supreme Court of the State of Texas to the Court of Civil Appeals for the First Supreme Judicial District, seeking to reverse said judgment (Record, 562-603) which petition was by the Supreme Court of the State of Texas on April 20, 1920, denied (Record, p. 42), and thereupon the judgment of the Court of Civil Appeals against plaintiffs in error and the United States Fidelity and Guaranty Company, surety on its supersedeas bond, became final and writ of error is here prosecuted from the judgment of that court (Record, pp. 43-55).

The essential question involved, therefore, is: Were the lumber shipments in question intrastate shipments, subject to the rules, regulations and orders of the Railroad Commission of Texas, or did said shipments constitute foreign commerce to which should be applied the rates duly filed with the Interstate Commerce Commission and legally established? It is finally established by the proceedings in the courts below that the State rate applicable was 6% cents per hundred pounds and that the interstate rate applicable

was 15 cents per hundred pounds. If the shipments in controversy were intrastate commerce, the recovery of the overcharge was legal and the construction placed upon the Texas statutes by the Court of Civil Appeals as to the number of penalties recoverable being binding upon this court, the judgment for penalties would likewise be legal. If, however, these shipments constituted foreign commerce, the 6½ cent State rate was not applicable, there was no overcharge and hence no recovery could be had.

A second question arises under the 18th paragraph of the first amended original answer of the Texas and New Orleans Railroad Company (Record, p. 92) wherein it is set up that the rate of 6½ cents per hundred pounds prescribed by the Railroad Commission of Texas is confiscatory and compels plaintiffs in error to transport lumber from Ruliff to Sabine at less than the cost of service and operates to deprive plaintiffs in error of their property without due process of law, contrary to section one of the Fourteenth Amendment to the Constitution of the United States; that the action of the Railroad Commission of Texas in establishing said 6½ cent rate was, therefore, void as taking property without due process of law and no recovery could be had

either as for an overcharge or for a penalty, regardless of whether the shipments constituted intrastate or foreign commerce.

Defendant in error demurred to this defense (see paragraph 7 of supplemental petition, Record, p. 104), basing its demurrer upon the provisions of Article 4564 of the Revised Civil Statutes of the State of Texas, which is as follows :

"ART. 4564. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said Commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter."

The demurrer, therefore, raised the question that, inasmuch as prior to the institution of this suit the order of the Railroad Commission of Texas had not been set aside in a direct proceeding brought against the Railroad Commission for that purpose, it must be held as conclusive and could not be assailed in any action between pri-

vate parties. The contention of plaintiffs in error was that if the order of the Railroad Commission was void as operating to deprive them of their property without due process of law contrary to the Federal Constitution, the provisions of said Article 4564 would not apply and that although the order had not been assailed in a direct proceeding brought against the Railroad Commission of Texas, that it was competent for plaintiffs in error in a suit brought by a private individual either for overcharges or for penalties to raise the question that the order was void as in conflict with the due process clause. The demurrer having been sustained, error was assigned thereon and the action of the trial court in this particular sustained.

The federal questions involved and here relied upon were presented at every stage of the proceedings by answer in the trial court, special charges requested, proper assignments of error in the Court of Civil Appeals, by motion for rehearing in that court and by application for writ of error to the Supreme Court of the State.

The Sabine Tram Company is a lumber manufacturing company situated at Ruliff, in the State of Texas, on the line of the Texarkana & Fort

Smith Railway north of Beaumont. W. A. Powell Company, Limited, is a company engaged in the business of exporting lumber from Port Arthur and Sabine Pass to European ports. In August, 1906, and prior to the shipments here in controversy, W. A. Powell Company, Limited, had made sales to customers for future European delivery of large quantities of heavy pine lumber and had chartered steamships to carry same from the port of Sabine. After these sales had been made and these ships chartered, to wit, on August 28, 1906, said W. A. Powell Company, Limited, purchased 500,000 feet of a particular kind of lumber from Sabine Tram Company, known to all lumber manufacturers as export lumber, amounting to 33 carloads, the same to be applied to the discharge of said European contracts, it being agreed by the two companies that same should be delivered by Sabine Tram Company to W. A. Powell Company, Limited, f. o. b. Sabine, during the months of September and October, 1906. The W. A. Powell Company, Limited, was at that time and had been for a long time prior thereto, as was well known to the Sabine Tram Company, engaged exclusively in the business of exporting lumber. The lumber ordered and shipped was

of the peculiar dimensions used only in the export trade and was known to all the lumber trade as export lumber. Prior to the contract of August, 1906, Sabine Tram Company had sold other export lumber to W. A. Powell Company, Limited, which had been shipped out through Sabine under an export rate of four cents per hundred pounds which had theretofore been in effect, having been regularly filed and published with the Interstate Commerce Commission (See testimony F. J. Beard; C. S. Flannagan, R., 186, 170-1). The station of Sabine consists of about fifty inhabitants and there is no local market for lumber there. The Sabine Tram Company had not shipped lumber to that point for local delivery for a number of years. It was to the contrary a regular port of trans-shipment and during the year 1905, there were exported through the port 14,667,670 feet of lumber, and for the year 1906, 39,554,000 feet. The Court of Civil Appeals makes the following finding of fact (Record, p. 41):

" There is not now and was not at the time these shipments moved any local market for lumber at Sabine, the population of which place does not exceed fifty in number. Appellees have never done any local

business at that point. For the year 1905 there was exported through the port of Sabine 14,667,670 feet of lumber; for the year 1906, 39,554,000 feet. The shipments in controversy, together with other shipments of lumber through Sabine, and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine."

The lumber involved was purchased expressly for export and the Sabine Tram Company knew that it was intended for export. The manner of shipment was as follows: The cars were billed out of Ruliff, Texas, by the Sabine Tram Company to the station of Sabine, the bills of lading naming Sabine Tram Company as the consignor and naming "Sabine Tram Company, notify W. A. Powell Company, Limited," as consignee. The bill of lading for each car was endorsed by Sabine Tram Company and by it attached to an invoice for the lumber loaded thereon together with sight draft drawn by Sabine Tram Company on W. A. Powell Company, Limited, for the amount of the invoice, which draft was paid by and the bill of lading delivered to W. A. Powell Company, Limited, before the arrival of the car at Sabine.

By payment of the drafts, W. A. Powell Company, Limited, became the owner of the lumber, and the Sabine Tram Company no longer claimed or had any interest in the same, but owed to W. A. Powell Company, Limited, a refund of whatever amount the freight charges were on said car from Ruliff to Sabine, which refund was in due course paid by the Sabine Tram Company to W. A. Powell Company, Limited. The way-bill accompanying each shipment was stamped, "Interstate" and on each way-bill was written "for export to Europe." The local station of Sabine is about one-half mile from the port of Sabine where plaintiff in error, Texas and New Orleans Railroad Company, has provided terminal facilities, including wharves, docks and slips for the exclusive accommodation of the export and import and coastwise movements of freight. No freight carried to Sabine by rail intended for local consumption was ever delivered at such docks or wharves. W. A. Powell Company, Limited, prior to the arrival of the lumber had taken out a blanket policy of insurance covering the lumber until its arrival at European ports (Record, p. 176). C. S. Flannagan who was agent for W. A. Powell Company, Limited, acted also as agent for the Sabine Tram Company at Sabine, in presenting the bills of lading and

in paying the freight. Under his instructions, the cars were delivered upon the wharves of the Texas and New Orleans Railroad about one-half mile distant from the local station of the Texas and New Orleans Railroad Company and the lumber was transferred directly from the cars into the water of the slips from which it was loaded into the hold of the waiting ship by which it was thence taken to European ports (Record, p. 163).

Under the rules of the Railroad Commission of Texas on local or intrastate business \$1.50 was allowed for switching charges and 48 hours free time. Under the regulations of the Interstate Commerce Commission for export business \$2.50 was allowed for switching charges and seven days' free time before demurrage charges accrued. The switching charge of \$2.50 per car under the interstate regulations was absorbed out of the 15-cent rate. Flannagan demanded and received the seven days' free time allowed under the Interstate Commerce rules and paid no switching charge. He says (Record, p. 171):

"The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff and were switched up to the wharves and slips without being unloaded at the

local station, they were all unloaded at the slips, switched up there and unloaded there. I know that it was a continuous movement right through the local station at Sabine up to the port of trans-shipment."

The lumber was shipped out to Europe by the vessels Manchuria billed for Greenock, Scotland, the Olive Moore to Aberdeen and Queensboro and the Chelford for Zaandam, Holland, which had been previously chartered for that purpose. As stated, all three of the ships had been chartered for the purpose of transporting this lumber prior to its arrival for application to contracts already made and one of the ships waited at the docks for the arrival of part of this lumber which constituted a part of its cargo. One of the ships which carried the last shipment of lumber was chartered by W. A. Powell Company, Limited, after the lumber began to arrive at Sabine, but before all of the shipments had left Ruliff. None of the lumber remained in the slip at Sabine or on the docks, except for the time necessary to await the arrival of the particular ship which had been chartered for the purpose and which had been designated by W. A. Powell Company, Limited, as the ship which was to carry that particular lumber from

the port of Sabine to the European port (Record, pp. 162-163).

It appears that on arrival of the lumber at Sabine both W. A. Powell Company, Limited, and Sabine Tram Company, expected to pay the old export rate of 4 cents, and being compelled to pay 15 cents, paid under protest. This appears from a letter of Mr. Walden (Record, p. 137) and the testimony of Mr. Flannagan (Record, pp. 170-172) as follows:

"The reason I called up Mr. Walden was we had handled a whole lot of export lumber before and the export rate on export lumber theretofore had been 4 cents and when they demanded six and afterwards 15 cents, I called up Mr. Walden. What I understood and what my people understood was that the rate of 4 cents was the rate on export lumber. It was what I understood to be the export rate. I can't remember and don't know how long it was before I began to receive this sort of lumber involved in this suit since I had occasion to pay freight on other export lumber at Sabine. Don't know whether it was several months or it might have been only a day or two. I cannot say whether we had paid the 4-cent rate on export lumber at Sabine any time after August 6, 1906, or not. I

don't remember the date, but up to this shipment, we had only paid four cents. I knew up to that time the export rate had been four cents. I never did know the local [intrastate] rate paid on freight delivered locally at Sabine. I never inquired to find out. It is a fact that when I called up Mr. Walden and explained that they were demanding six cents, he told me to tender the regular export rate of four cents, and if they demanded more than that, to pay it to them under protest. . . . It is a fact that I told Mr. Walden that the railroad was trying to raise or increase the export rate, or the rate on export stuff, that he wanted it paid under protest and to try and see if they couldn't defeat the export rate, he never asked me the question, but I told him I thought so, I thought the railroads were trying to do that, I didn't know of any other reason why they were trying to raise the rate. After I had that conversation with him, he said in effect that he was going to try to make the local Texas Commission rate apply, if they were going to raise the export rate. Previous to that time the regular export rate had been recognised and paid on all that going to Sabine. I couldn't state whether on these shipments we ever used the whole seven days allowed on export shipment or not, I don't think we ever used the entire

seven days ; the expense bills will show that. I am pretty sure there never was any claim for demurrage against any of those cars. I know that as a rule after they reached Sabine they were given prompt service. The cars of lumber involved in these shipments that came through the local station at Sabine moved right on through from Ruliff and were switched up to the wharves and slips without being unloaded at the local station. They were all unloaded at the slips, switched up there and unloaded there. I know that it was a continuous movement right through the local station at Sabine up to the port of trans-shipment. . . . There was only one instance where the car beat the bill of lading to me. . . . It was only in one instance that the lumber coming in on the cars after the ship was in port, I remember that clearly, it was a fact, that was only for one car that we held the shipment. The ship was waiting for lumber when that car got there, but it was not waiting for that particular car. The ship was waiting for the lumber, and that car got there, and we unloaded it into the slip, and measured it up, found that it suited and loaded it into the ship. The reason I wanted Mr. Walden to send the bills of lading to me without sending through New Orleans, was because, I wanted the lumber released

and measured up to know how much I would have for a ship that was either there or coming. All these ships chartered by W. A. Powell Company, Limited, at the time operated in several ports. I could not say positive whether it is a fact that at the time of the purchase of this particular lumber we had ships chartered for that particular lumber. I knew when I got advice from New Orleans that I had shipments to make, but at the particular time when this contract was made there were several vessels that would come up to Sabine afterwards, but they had not determined at this time to send these shipments there; after the contract was made, they did decide to send them there. Mr. Powell on the day he made these purchases said that he had some contract to meet, but named no particular ship to me. I didn't know what particular ship would be sent. But this lumber was bought to help fill contracts that he already had made and these contracts that he had already made were for sales abroad. The lumber was actually sent out from Sabine to fill these orders."

The Court of Civil Appeals finds (Record, pp. 3-8) :

" This is a suit instituted by the Sabine Tram Company, a lumber manufacturing corporation, against the Texas & New Or-

lous Railroad Company and the Texarkana & Fort Smith Railway Company to recover excessive freight charges on shipments of lumber by plaintiff, over the lines of railway of defendants and in addition statutory penalties for such overcharge.

"It was alleged in the petition that at various times from September 1 to November 1, 1906, plaintiff, the Sabine Tram Company, shipped from Ruliff, Texas, a station on the line of the Texarkana & Fort Smith Railway Company, to Sabine, Texas, on the line of the Texas & New Orleans Railroad Company, over the lines of said roads, certain carloads of lumber consigned to said Sabine Tram Company, 'Notify W. A. Powell, Company'; that the lumber was received by the Texarkana & Fort Smith Railway Company and by it carried to Beaumont, Texas, at which point it was turned to the connecting carrier, the Texas & New Orleans Railroad Company, and by it carried to destination at Sabine, Texas, and there delivered to plaintiff's order. It was alleged that the rate of freight established by the Railroad Commission of Texas for the carriage of said lumber was, from Ruliff to Beaumont, four cents per hundred pounds, and from Beaumont to Sabine two and one-half cents per hundred pounds, the rate so established being

from Ruliff to Sabine, the sum of such two rates, or six and one-half cents per hundred pounds. That the Texas & New Orleans Railroad Company, the terminal carrier, on the arrival of said lumber at Sabine demanded for itself and the Texarkana & Fort Smith Company, acting for the latter company as well as for itself, fifteen cents per hundred pounds, which was paid by plaintiff under protest. The over-charge sought to be recovered was alleged to be \$1,788.33, and in addition plaintiff sought to recover the maximum penalty of \$500.00 provided by statute upon each car load of said lumber.

" Defendant set up by way of defense that the carriage of the lumber from Ruliff to Sabine was in the way of transportation of the same to points beyond the limits of the United States, of foreign shipments, and the same came under the provisions of the Interstate Commerce Laws of the United States, and was not subject to the rates prescribed by the Texas Railway Commission, or the laws of Texas, and further that the fifteen cents per hundred pounds charged and collected as freight was the proper freight charge in accordance with schedule of freight charges filed by said Railroad Companies, respectively, with the Interstate Commerce Commission, to which said shipments were subject. Other matters were

set up by way of defense which need not be here specifically set out.

" The substantial defense of defendants is that the shipment from Ruliff to Sabine was a foreign shipment, within the purview of the constitution and laws of the United States.

" The trial court instructed the jury that the shipments of lumber in question were subject to the freight rates prescribed by the Railroad Commission of Texas, and that plaintiffs were entitled to recover the excessive charges as claimed. As to the penalties sued for, the jury was instructed that plaintiff was entitled to recover under the statute for five separate penalties of not less than \$125.00 nor more than \$500.00 each; that is, that it was entitled to recover in penalties not less than \$625.00 nor more than \$2,500.00 in the discretion of the jury.

" Under this charge the jury returned a verdict for plaintiff against both defendants jointly for \$1,788.33 overcharge of freight, and \$1,785.00 penalties, upon which judgment was rendered. From the judgment, their motion for a new trial having been overruled, defendants prosecute this appeal.

" There seems to be no dispute as to the material facts with the single exception of the amount of the Texas Commission rate applicable to the shipments if they be subject to such rate. The evidence establishes the following facts :

"At the date of the transactions in question, the Sabine Tram Company was engaged in the manufacture of lumber at its mill at Ruliff, a station in Texas on the line of the Texarkana & Fort Smith Railway Company. W. A. Powell Company, Limited, was engaged in buying lumber for export to different points in Europe, through the ports of Sabine and Port Arthur, both in the State of Texas. On August 28, 1906, having made sales to customers for future delivery in Europe of large amounts of heavy pine lumber, for the carriage of which steamships had in part already been chartered, to fill such contracts W. A. Powell Co. bought of the Sabine Tram Company 500,000 feet of heavy pine lumber of certain dimensions, to be delivered during the months of September and October. The contract provided for delivery either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas, at the option of the seller. The seller exercised the option to deliver at Sabine, a station on the line of the Texas & New Orleans Railway. During the months of September and October the lumber purchased was delivered to the Texarkana & Fort Smith Railroad at Ruliff to be by it transported to Beaumont, the terminus of its line, and thence by connecting carrier, the Texas & New Orleans Railway, to Sabine and delivery to the Sabine Tram

Company. There were 24 several shipments of the lumber on as many different days, the shipments embracing 33 cars, for which 30 separate bills of lading were executed by the Texarkana & Fort Smith road, for delivery at Sabine to the Sabine Tram Company, 'Notify W. A. Powell Company, Limited'. No other contract or arrangement was made by the Sabine Tram Company for the carriage of the lumber except that evidenced by the bills of lading aforesaid. Way-bills accompanied the shipments upon which were marked in pencil 'for export', but the Sabine Tram Company had no connection with, or knowledge of, the making of these way-bills, which was the act of the railway company alone. According to the course of dealing between the parties these bills of lading were endorsed by the Tram Company and sent through a bank to W. A. Powell Company, Limited, at New Orleans, La., attached to a draft for the price of the lumber, which being paid, the bills were delivered to Powell Company and by them transmitted to their agent Flannagan, at Sabine. In case of most of the shipments in question the bills of lading reached Flannagan at Sabine before the arrival of the lumber for which they were given. The lumber was carried under the shipping contracts or bills

of lading aforesaid, by the Texarkana & Fort Smith road to Beaumont, and there delivered to the Texas & New Orleans road, by which it was carried to Sabine. Upon arrival at the station of Sabine it was, by direction of the agent of Powell Company carried without delay about a quarter of a mile beyond the station to the dock, where the lumber was to be unloaded. The lumber was unloaded from the cars into water of the slip in reach of ship's tackle, ready for loading onto ships. The Sabine Tram Company had no connection with this further carriage or switching of the lumber to the docks after its arrival at the station of Sabine, but this was done solely at the instance and under the direction of the agent of Powell Company. The transportation from Ruliff to Sabine was entirely within the State of Texas.

"The rate established by the Railroad Commission of Texas for transportation of lumber from Ruliff to Beaumont was four cents per hundred pounds and from Beaumont to Sabine was two and one-half cents per hundred pounds, and by order regularly made by the said Commission it was provided that the through rate should not be more than the sum of the locals, under which order the through rate demandable from Ruliff to Sabine was six

and one-half cents per hundred pounds, the orders of said Commission further providing for a switching charge of \$1.50 per car from Sabine station to the docks. According to a schedule of freight tariffs filed by the Texarkana & Fort Smith Railway Company with the Interstate Commerce Commission the freight charge on lumber for interstate or foreign transportation from Ruliff to Beaumont was ten cents per hundred pounds, and according to like schedule or freight tariffs filed by the Texas & New Orleans Railroad Company with the Interstate Commerce Commission from Beaumont to Sabine was five cents per hundred pounds. When these tariffs were so filed is immaterial, except upon the issue of good faith on the part of defendants, as the plaintiff in no event, regardless of the interstate rate, would not be entitled to recover in this suit if the Texas Commission rate was not applicable, which would only be the case if the shipment be regarded as an intrastate, and not a foreign or interstate shipment; which is the fundamental issue. We find, however, that the rate under the Act of Congress relating thereto, from Ruliff to Sabine was fifteen cents per hundred pounds.

" When the lumber had been switched to the docks, W. A. Powell Company, through

their agent, presented the bills of lading, and demanded the lumber, offering to pay the freight charges which according to the course of dealing between the parties they were to pay for the Sabine Tram Company, who owed the same and which it was to repay to Powell Company. The Texas & New Orleans Company, acting for itself and the Texarkana & Fort Smith Company, demanded the Interstate Commerce Commission rate of fifteen cents per hundred pounds, having been previously instructed by the Texarkana & Fort Smith Company that ten cents per hundred pounds was its rate from Ruliff to Beaumont. This Powell Company, under instructions of the Sabine Tram Company, at first refused to pay, but after communicating with the Tram Company, finally paid the freight at this rate under protest, in order to get possession of the lumber.

" For switching from Sabine to the docks, the rules and orders of the Texas Railroad Commission would allow a switching charge of \$1.50 per car on domestic shipments, and if foreign or interstate shipments, the Interstate Commerce Commission tariffs would allow a switching charge of \$2.50 per car, had not the charge for this service been absorbed in the 15 cent rate established aforesaid.

" Upon shipments of freight, not for ex-

port, only 48 hours free time was allowed for unloading cars, after which demurrage was charged, and if not removed from railroad premises when unloaded, a storage charge was made in addition. No such charge was made upon any of the lumber involved in this suit.

"W. A. Powell Company, Limited, regarded the shipments in controversy as export shipments, and demanded, expected, and received, the use of terminal facilities, additional free time and other privileges accorded to shippers of export freight under export tariffs.

"The railway company knew, when the freight charges were collected, that the lumber was to be placed in its slips and exported to Europe on incoming ships and the freight was believed by the officers and agents of the railroad company at the time the charges were collected to constitute foreign commerce and to both permit and require the application of the rate fixed by the tariff on file with the Interstate Commerce Commission, and this rate was applied.

"All the lumber in question was in fact unloaded from the cars by W. A. Powell Company, Limited, into the Texas & New Orleans Railroad Company's slips, or upon

its docks, in reach of ships' tackle and loaded into the ships previously chartered for the purpose by W. A. Powell Company, Limited, which steamships carried same thence direct to Europe, where this lumber was applied upon contracts for sale in Europe made before the lumber began to leave Ruliff, and made in fact before the lumber was purchased from the Sabine Tram Company, and before it was sawed, and before the logs from which it was sawed left the State of Louisiana for the Sabine Tram Company's mill at Ruliff, in the State of Texas.

"One of the ships actually waited at the docks at Sabine for the arrival of part of this lumber which constituted a portion of its cargo.

"The ship which carried the last of this lumber from Sabine to Europe was chartered by W. A. Powell Company, Limited, for this purpose after these lumber shipments began to arrive at Sabine, but before all of the shipments had left Ruliff.

"None of this lumber remained in the slip at Sabine, or on the docks, except for the time necessary to await the arrival of the particular ship which had previously been chartered for the purpose and designated by W. A. Powell Company as the ship which was to carry that particular lumber from the port of Sabine to Europe.

" Any shipment of lumber intended for export to Europe, and in fact shipped from any point in Texas, to and through Sabine as its port of transshipment, could be contracted for, billed to and from Sabine, shipped, transported and handled in every particular just as was this lumber.

" W. A. Powell Company, Limited, before this lumber began to arrive at Sabine, took out a blanket policy of insurance, protecting same against loss, from the time this lumber should come into the possession of W. A. Powell Company, Limited, at Sabine until its final delivery by W. A. Powell Company, Limited, in European ports.

" At the time this lumber was shipped it was destined by Powell Company for export to some foreign port, but the particular destination of any particular portion of the lumber was not fixed, although the destination of all of the lumber to certain foreign ports was known and fixed. The Sabine Tram Company had no concern with the destination of the lumber after it came into the hands of Powell Company, and had no particular knowledge thereof. It supposed from the fact that it was known that Powell Company were exporters of lumber, from the character of lumber which was such as

was intended for export, from the fact that Sabine was an important place at which very little lumber was used, and from other facts and circumstances, known to millmen generally, that the lumber was intended for export, but gave that matter no concern, being only concerned with the delivery of the lumber to Powell Company at Sabine station, and paying the freight thereon. What was done by the Texas & New Orleans Railroad Company after the arrival of the lumber at Sabine, in the way of switching to the docks, allowance of certain privileges allowed only to export freight, was done at the instance and for the benefit of Powell Company, with which the Tram Company had no concern.

"The difference between the amount demanded and received by the Texas & New Orleans Railroad Company for itself and the Texarkana & Fort Smith Railway Company, and the Texas Commission rate was as found by the jury, \$1,788.33. As stated before, there were 33 cars of the lumber for which 30 separate bills of lading were executed, some of the timbers requiring, on account of their length, two cars, which accounts for the difference between the number of cars and the number of the bills of lading. The shipments were

made at 24 different times, that is on 24 different days. The agent of the Texas & New Orleans Railroad Company at Sabine did not make separate demands upon each expense bill, but allowed them to accumulate, in which way it occurred that only five separate demands for freight were made at different dates, the five demands covering the entire freight. From this the trial court arrived at the conclusion that the defendants had incurred liability for five separate statutory penalties, of not less than \$125.00 and not more than \$500.00, that is, not less than \$625.00 and not more than \$2,500.00, which was the sole issue submitted to the jury.

" Upon the freight bills was a charge for wharfage against the Tram Company which was paid by Powell Company as a proper charge against them and not against the Tram Company. Export freight was entitled to seven days' free time for unloading, and 30 days' free storage on the docks, or in the slips, which privileges were availed of by Powell Company in handling this lumber.

" The freight bills were made out against the Sabine Tram Company and defendants knew that Powell Company were paying the freight for the Tram Company.

" The defendants, in charging the export

rate, acted under the advice of their attorneys, that the facts constituted the lumber an export shipment and subjected it to the Interstate Commerce Commission rate.

"While there are other incidental questions presented, the fundamental question involved in this appeal is whether the shipment of the lumber was a transaction falling under the definition of foreign commerce. If it was, then under the express provisions of the act establishing the Railroad Commission of Texas and prescribing its duties and authority, neither the rate fixed by such commission nor the provisions of the statute, upon which alone the claim of plaintiff rests have any application and its suit must fail (Article 4280—(1))."

On request of both parties to correct findings of fact, the court further found (Record, pp. 40, 41).

"Powell and Company purchased lumber from other mills in Texas, with which to supply its said sales in part; it did not know when any particular car or stick of lumber left Ruliff, into which ship or to what particular destination it would ultimately go, or on which sale it would be applied; this not being found out until its agent, Flannagan, inspected the invoice mailed to, and received by, him after shipment. Upon inspection of the invoice, he determined from

the character of the lumber described whether it was suited for one cargo or the other. The lumber remained, after arrival, in the slips or on the dock from one to thirty days until a ship chartered by Powell & Company arrived, when that Company selected out the lumber suited for that cargo, and shipped it forward to the destination for which Powell & Company intended it.

"We withdraw our finding that the rules and orders of the Texas Railroad Commission would allow a switching charge of \$1.50 per car on domestic shipments. The only testimony we can find on this point is that of witness Beard, General Freight Agent of the Texas & New Orleans Railroad Company, that 'the Texas rate for switching these cars would have been \$1.50 per car, that is, if Powell Company owned the docks; if it was shipped to the warehouse owned by consignees or his place of business.' This testimony does not authorize the general finding on this point made by us.

"The freight rate due under the tariff on file with the Interstate Commerce Commission and collected on these shipments was 15 cents per hundred pounds and under this rate, the services rendered without other charge included switching from Sabine station to the docks, seven days' free time exclusive of Sundays within which to un-

load the lumber from the car and thirty days' free storage of the lumber upon the docks at the wharves or in the slips belonging to the Texas and New Orleans Railroad Company. W. A. Powell Company, Ltd., availed itself of all these services and privileges which were stipulated for by the Interstate Commerce Commission tariff and included in the 15-cent rate charged on export freight.

"There is not now and was not at the time these shipments moved, any local market for lumber at Sabine, the population of which place does not exceed fifty in number. Appellees have never done any local business at that point. For the year 1905 there was exported through the port of Sabine 14,667,670 feet of lumber; for the year 1906, 39,554,000 feet. The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine."

Copies of the various way-bills are found (Record, pp. 377-410), all having the notation "export to Europe."

The bills of lading were prepared by the Sabine Tram Company at Ruliff and delivered to the

agent of the Texarkana and Fort Smith Railway Company for signature.

The freight was paid by W. A. Powell Company, Limited, and subsequently repaid to them by the Sabine Tram Company. Prior to the publication of the 15-cent export rate, there was in force a 4-cent export rate which had been cancelled prior to the movements here in question and a 15-cent rate legally published. On August 3, 1906, the Sabine Tram Company wrote to W. A. Powell Company, Limited, at New Orleans (R., 138) as follows:

"In this connection, beg to advise that the railroad company will probably try to collect freights in excess of four cents as they are trying to increase their export rate. We wrote you in reference to this on the 29th. We would thank you to refuse to pay anything in excess of four cents until it is absolutely demonstrated that they are going to enforce that rate and we would thank you to make each payment under protest, recording in your check 'rate paid under protest.'"

Mr. Flannagan, agent of both parties at Sabine, testified (Record, pp. 170, 171) as follows:

"The reason I called up Mr. Walden, [General Manager of the Sabine Tram Com-

pany], was we had handled a whole lot of export lumber before and the export rate on export lumber theretofore had been four cents, and when they demanded six and afterwards fifteen cents, I called up Mr. Walden. What I understood and what my people understood was that the rate of four cents was the rate on export lumber. It was what I understood to be the export rate. I can't remember and don't know how long it was before I began to receive this sort of lumber involved in this suit since I had occasion to pay freight on other export lumber at Sabine. Don't know whether it was several months, or it might have been only a day or two. I cannot say whether we had paid the four-cent rate on export lumber at Sabine any time after August 6th, 1906, or not. I don't remember the date, but up to this shipment, we had only paid four cents.

* * * I never did know the local rate on freight delivered locally at Sabine. I never inquired to find out. It is a fact that when I called up Mr. Walden and explained that they were demanding six cents, he told me to tender the regular export rate of four cents and that if they demanded more than that, to pay it to them under protest."

At this point, the following question was asked the witness Flannagan:

"Q. In that conversation about the same matter, didn't he [Walden] say that he understood the railroad was trying to raise or increase the export rate, or the rate on export stuff, that he wanted it paid under protest, and to try and see if they couldn't defeat the export rate?"

to which the witness answered:

"A. It is a fact that I told Mr. Walden that the railroad was doing that and he never asked me the question, but I told him I thought the railroads were trying to do that. I didn't know of any other reason why they were trying to raise the rate on this export stuff."

"Q. And after you had that conversation with him about it, didn't he say in effect that he was going to try to make the local Texas Commission rate apply, if they were going to raise the export rate?"

"A. He did."

The witness was then asked:

"Q. Previous to that time the regular

rate had been recognized and paid on all that going to Sabine?"

to which he answered:

"A. Yes."

It appears that none of the shipments were intended for local delivery at Sabine or were delivered locally at that station, but moved in continuous transit from the point of origin, Ruliff, to the wharves and slips of the Texas and New Orleans Railroad Company where they were delivered into the hold of the ships "Manchuria," sailing September 26, 1906, the "Olive Moore," sailing October 24, 1906, and the "Chelford," sailing November 21, 1906, by which ships they were carried to their foreign destinations (Record, pp. 166, 171); that the rule of free time applying to local shipments of forty-eight hours was not applied to these shipments, but that on the contrary, they were allowed the 168 hours' free time applicable to export lumber shipments (Record, p. 187). It further appears that wharfage was paid on the shipments by W. A. Powell Company, Limited (Record, p. 8).

The case presented, therefore, is that prior to the purchase of the lumber the Powell Company had made contracts for the delivery of the same in Europe; that the lumber purchased

was of a particular kind used only for export; that the Sabine Tram Company knew that the lumber was for export; that before delivery at Sabine ships were waiting in some instances for its arrival for export; that all the ships had been chartered before the arrival of the lumber at Sabine, the port of trans-shipment; that Powell Company, Limited, had prior to arrival of the lumber at Sabine taken out policies of insurance covering the lumber from the time it left the port of Sabine until arrival at its point of destination in Europe; that the way-bills of each shipment were marked "for export to Europe"; that the lumber was not intended for delivery at the local station of the Texas and New Orleans Railroad Company at Sabine and was not so delivered, but that it moved directly through the local station to the wharves and slips of the Texas and New Orleans Railroad and was transferred from the cars into the water of the slips; that it was treated both by the railroad company and Flannagan, the joint agent of Sabine Tram Company and W. A. Powell Company, Limited, as export lumber, and the 168 hours' free time was applied thereto instead of the 48 hours' free time allowed for local shipments; that there was no local market for lumber at Sabine; that the

Sabine Tram Company had never shipped lumber locally there; that the transit to the wharves was continuous and unbroken, the lumber remaining in the slips only sufficient time for loading into the ships and that neither Sabine Tram Company nor W. A. Powell Company, Limited, ever took possession of the lumber at Sabine, the local station, nor elsewhere, except in so far as the loading from the slips into the hold of the ship could be construed as such possession. That prior to the installation of the 15-cent export rate, a 4-cent export rate had been in effect and the Sabine Tram Company demanded the application of this 4-cent export rate instead of either the legal 15-cent export rate or the 6½-cent Railroad Commission rate.

The question is, therefore, presented: Does the fact that the shipment moved on a local bill of lading from a point within the State to a port of trans-shipment within the State, the shipment being consigned to the order of the consignor, notify W. A. Powell Company, Limited, the exporter, change the essential nature of the commerce from intrastate or domestic commerce to foreign commerce under section one of the Act to Regulate Commerce.

Plaintiffs in error filed the following *Specifications of Error* in this Court (Record, pp. 49-54):

"I.

"The Court of Civil Appeals erred in holding that the shipments in controversy were intrastate commerce and subject to the rates, rules and regulations of the Railroad Commission of the State of Texas and in entering judgment for the sum of \$1,788.00, the difference between the freight charges under the rates, rules and regulations of the Railroad Commission of Texas and the interstate rates applicable thereto under tariffs of plaintiffs in error regularly filed with the Interstate Commerce Commission and legally published, with six per cent interest on said shipment from January 1, 1907, and also for penalties in the sum of \$3,000.00, being twenty-four penalties of \$125.00 each assessed under the statutes of the State of Texas as a penalty for charging a freight rate greater than that prescribed by the Railroad Commission of Texas; and in failing to find that as a matter of law the shipments in controversy herein constituted and were interstate and foreign commerce shipped from a point within a State through Sabine, a port of trans-shipment, to a foreign country not adjacent to the United States.

" II

" The Court of Civil Appeals erred in overruling and failing to sustain the sixth assignment of error herein which is as follows :

" The court erred in failing to direct a verdict in favor of the defendants herein and in failing and refusing to give Special Charge No. 1 requested by defendants directing the jury to return a verdict in favor of the defendants and each of them, for that the several shipments declared upon by defendant in error, plaintiff in the court below, were not intrastate commerce subject to the rules and regulations of the Railroad Commission of Texas, but were each and all foreign commerce moving from a point within the State of Texas in continuous and unbroken transit through a port of trans-shipment to points in Europe, being foreign countries not adjacent to the United States and such shipments as such foreign commerce were not subject to the rates, rules and regulations of the Railroad Commission of Texas or to the laws of said State, but were each and all subject to the rates, rules and regulations applicable thereto which had theretofore been filed with the Interstate Commerce Com-

mission and legally published and established, the freight rates collected by plaintiffs in error, being the rates so legally established and applicable thereto.

" III.

" The Court of Civil Appeals erred in overruling and failing to sustain the fifteenth assignment of error herein which is as follows :

" The court erred in failing and refusing to give Special Charge No. Six asked by the defendants to the effect that if defendants had published and filed with the Interstate Commerce Commission schedules and tariffs of rates upon lumber moving from Ruliff, Texas, through Beaumont, Texas, to the wharves and docks of defendant, Texas & New Orleans Railroad Company situate adjacent to the station of Sabine, Texas, on the road of the latter company were intended for export to foreign countries other than Mexico, and that the rates charged upon the shipments involved in this controversy were collected under and in accordance with the interstate tariff so filed, and that if they believed from the evidence that the defendant, the Texas & New Orleans Railroad Company, and its agent acting in that behalf believed in good faith and

acting upon reasonable grounds for that belief that the shipments in controversy were foreign shipments and intended for export to foreign countries other than Mexico, then in that event they should find for the defendant upon the issue of penalties thereto submitted by the court.

" IV.

" The Court of Civil Appeals erred in overruling and failing to sustain the sixteenth assignment of error herein which is as follows :

" The court erred in failing and refusing to give defendants' Special Charge No. Seven to the effect that defendants having prior to the shipments in controversy duly and legally established, filed with the Interstate Commerce Commission and published tariffs of rates covering shipments of lumber from Ruliff, Texas, to Sabine, Texas, over their respective lines in carload lots for export to foreign countries other than Mexico and that the freight charges herein collected were charged and collected under and in pursuance of such tariffs and that the shipments involved actually moved in carload lots in continuous carriage from said station of Ruliff, Texas, to said station of Sabine, Texas, a port of trans-shipment, and were

thence actually exported to Europe; that as a matter of law it was the duty of defendants to charge and collect no other freight charges than those prescribed in the tariffs aforesaid and if they had have charged any other rate than that prescribed, they would have been subjected to penalties prescribed in the Act to Regulate Interstate and Foreign Commerce and the acts amendatory thereof; and that regardless of whether the lumber transported constituted foreign or interstate commerce, or intrastate or domestic commerce, it was the defendants' duty to apply the tariff so established and no other tariff and that, therefore, they should find a verdict for the defendant both upon the issue of actual overcharge demanded and the penalties sued for.

" V.

" The Court of Civil Appeals erred in overruling and failing to sustain the nineteenth assignment of error herein which is as follows :

" The court erred in rendering and entering a judgment for any amount against the defendants herein for the reason that the testimony herein shows that the shipments involved in this controversy constituted and were foreign commerce moving from a point

within the United States through a port of trans-shipment to foreign countries and that these defendants herein prior to said shipments had legally established, filed with the Interstate Commerce Commission and published schedules and tariffs of rates applicable to such shipments and that the rates charged and collected by defendants were the rates so established in said tariffs and schedules filed and published and were the legal rates applicable thereto.

" VI.

" The Court of Civil Appeals erred in overruling and failing to sustain the twentieth assignment of error herein which is as follows :

" The verdict of the jury and the judgment of the court is erroneous, because the Constitution of the United States, and especially Article One, section eight thereof and the act of Congress commonly known as the Interstate Commerce Act approved February 4, 1887, and acts amendatory thereof, authorize and permit the defendants to charge and collect the rates named in the tariffs promulgated and filed with the Interstate Commerce Commission and said verdict and judgment is a denial of that right

so claimed by the defendant under said Constitution and laws of the United States.

" VII.

" The Court of Civil Appeals erred in overruling and failing to sustain the twenty-second assignment of error herein which is as follows :

" The Court erred in holding and charging the jury as a matter of law that the plaintiff was entitled to recover five penalties amounting in the aggregate to not less than \$625.00 nor more than \$2,500.00.

" VIII.

" The Court of Civil Appeals erred in overruling and failing to sustain the twenty-third assignment of error herein which is as follows :

" The court erred in permitting the recovery of penalties in any amount herein and the verdict and judgment rendered herein is erroneous in finding for plaintiff upon the issue of penalties herein in this : That the uncontradicted testimony shows that the shipments by plaintiff declared upon moved in a continuous and unbroken journey from Ruliff, Texas, the point of origin, through Sabine, a port of trans-shipment, to a foreign port ; that prior to said shipments defendants had promulgated and filed with

the Interstate Commerce Commission tariffs of rates, applicable to such movements and that the defendants actually applied such rates to such movements; that defendants under and by virtue of the Act to Regulate Commerce approved February 4, 1887, and acts amendatory thereof and the Act of Congress approved February 19, 1903, commonly known as the Elkins Act and acts amendatory thereof, were compelled under the threat of severe penalties to apply said tariff and no other tariffs and that under the Railroad Commission Act of Texas, the charging and receiving of freight charges in excess of the rates prescribed by said Commission is punishable by a penalty of not less than \$125.00 nor more than \$500.00 and that to compel these defendants at their peril to decide, as a matter of law, which was the correct rate and to punish them by the infliction of said penalties for a mistake of law as to which was applicable is to deprive them of their property without due process of law and deprive them of the equal protection of the law, contrary to the Fourteenth Amendment of the Constitution of the United States.

"IX.

"The Court of Civil Appeals erred in overruling and failing to sustain the twenty-

fourth assignment of error herein which is as follows :

" The court erred in failing and refusing to direct a verdict in favor of defendants, because the evidence shows without dispute that when said lumber mentioned in plaintiff's petition started on its journey from Ruliff, Texas, same was destined to a foreign country and constituted foreign commerce and not intrastate commerce; that it was in fact shipped from Ruliff, Texas, a point within the United States, through Sabine, Texas, a port of trans-shipment on the Gulf of Mexico, to a foreign country and was not subject to or controlled or affected by the rates, rules or regulations of the Railroad Commission of Texas and the enforcement of said rates, rules and regulations of the Railroad Commission of Texas, in respect to said shipment is, therefore, violative of section eight, article one, of the Constitution of the United States and the act commonly known as the Interstate Commerce Act, approved February 4, 1887, and acts amendatory thereof.

" X.

" The Court of Civil Appeals erred in overruling and failing to sustain the twenty-

fifth assignment of error herein which is as follows :

"The court erred in instructing the jury to find in favor of plaintiff for any sum as penalties and in entering judgment for the sum of \$1,788.00 as penalties. Article 4575 of the Revised Statutes of Texas under which said penalties were allowed and adjudged is unconstitutional and void and is violative of and in contravention of section thirteen, Article one of the Constitution of Texas which provides that no excessive fines shall be imposed nor cruel or unusual punishment inflicted and is also in contravention of the Fourteenth Amendment of the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law nor denied the equal protection of the law within the jurisdiction of the State; that the infliction of penalties of not less than \$125.00 nor more than \$500.00 for each overcharge is an excessive fine and deprives the defendants of the equal protection of the law and demands their property without due process of law.

" XI.

"The Court of Civil Appeals erred in overruling and failing to sustain the fifth

assignment of error herein which is as follows :

"The court erred in sustaining Special Exception No. 7 contained in plaintiff's first supplemental petition filed herein January 20, 1908, to paragraph 18 of the first amended original answer of defendant, the Texas and New Orleans Railroad Company, as follows: '7. Plaintiff further specially excepts to the 18th paragraph of said answer and for grounds of exception shows that said paragraph constitutes no defense to this action, but on its face shows that it is an effort to inquire into the reasonableness of certain rates fixed by the Railroad Commission of Texas in an action between the Sabine Tram Company, plaintiff herein, a private party, and the railway companies affected by said rates in violation of Article 4564 of the Revised Statutes of the State of Texas, same being section five of an act passed by the Twenty-second Legislature of the State of Texas, entitled An Act to Establish a Railroad Commission for the State of Texas, etc., and appearing on page 58 of the Acts of 1891, for the reason that in an action to recover penalties for an alleged violation of the rates, orders, rules and regulations of the Railway Commission of Texas, it is

admissible to allege and prove that the same are unjust, unreasonable and confiscatory, and to deprive defendants of the right in such action to allege and prove that the same are unjust, unreasonable and confiscatory, is to deprive such defendants of due process of law, and deny them the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.

" XII.

" The Court of Civil Appeals erred in reforming the judgment of the District Court of Jefferson County which rendered judgment against plaintiffs in error, for the sum of \$1,788.00 with interest at the rate of six per cent. thereon from January 1, 1907, for alleged overcharges and for \$1,785.00 as penalties, and rendering judgment against plaintiffs in error for said sum of \$1,785.00 and interest as overcharges and for \$3,000.00 as penalties for said alleged overcharges, for the reason that the several shipments by plaintiffs declared upon were interstate and foreign commerce and as such were not subject to the rates, rules and regulations of the Railroad Commission of the State of Texas and that thereby these plaintiffs in error have been deprived of their rights, privileges and immunities

under the Constitution and laws of the United States and especially of section eight, Article 1 of the said Constitution which provides that 'Congress shall have power to regulate commerce with foreign nations and among the several states and with the Indian tribes,' and of the act of Congress entitled 'An Act to Regulate Commerce' Approved February 4, 1887, and 'Acts Amendatory thereof,' and said Court of Civil Appeals erred in holding that the several shipments were intrastate and domestic shipments, subject to the rates, rules and regulations of the Railroad Commission of Texas and in holding that plaintiffs in error were guilty of extortion under the laws of the State of Texas for demanding and receiving for such shipments the rates which legally applied thereto as foreign commerce in accordance with tariffs regularly filed with the Interstate Commerce Commission and legally established and published."

These specifications of error embrace essentially two propositions :

First, the form of the bill of lading is not controlling and the shipments constituted foreign commerce to which the rates of the Railroad Commission of Texas did not apply, and

SECOND. Plaintiffs in error in defense of this action had the right to show that the rate of the Railroad Commission of Texas was confiscatory and the denial of this right by the trial court in sustaining exceptions to the answer setting up this defense, and the affirmance of this action by the Court of Civil Appeals is a denial of the due process of the law and of the equal protection of the law in contravention of section one of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

I.

The shipments in question constituted foreign commerce to which the rates prescribed by the Railroad Commission of Texas did not apply.

Under section one of the Act to Regulate Commerce it is provided that the act shall apply to transportation "from any place in the United States to a foreign country and carried from such place to a port of trans-shipment or shipped from a foreign country to any place in the United States and carried to such place from a

port of entry either in the United States or an adjacent foreign country." The proposition is negatively stated in the proviso of section one, which is as follows :

" Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property or to the receiving, delivering, storage or handling of property wholly within one state and not shipped to or from a foreign country from or to any state or territory as aforesaid."

The facts in the case as found by the Court of Civil Appeals and established without conflict by the evidence show that the shipments of lumber in controversy moved from a point within the State of Texas, to-wit, Ruliff, on the Texarkana and Fort Smith Railway, in continuous transit to the docks, wharves and slips of the Texas and New Orleans Railroad Company at Sabine where they were transferred to ships chartered before the movement began and which in every instance but one were awaiting their arrival, by which ships they were transported to various European ports. W. A. Powell Company, Limited, were engaged exclusively in the export trade. The lumber shipped was of a peculiar kind used only in the export trade. There was no local market

for lumber whatever at Sabine and to the contrary there was a heavy export movement of lumber through that station. The Court of Civil Appeals finds that—

“The shipments in controversy, together with other shipments of lumber to Sabine and Sabine Pass, constitute a large and constantly recurring course of foreign commerce passing out through the port of Sabine” (Record, p. 41).

Insurance had been taken out by the exporters, W. A. Powell Company, Limited, covering its transit from the Port of Sabine to its destination in Europe. When the lumber was loaded on the cars and started from Ruliff, its destination was to points beyond the State. None of it was intended for local consumption or for re-sale in Texas. This was well understood both by the Sabine Tram Company and W. A. Powell Company, Limited. This was further shown by the fact that the way-bills in each case were marked “for export to Europe.” This information could only have been obtained from the Sabine Tram Company, the consignor. Both the Sabine Tram Company and W. A. Powell Company, Limited, treated the shipments as foreign commerce, subject to the regulations and rates filed

with the Interstate Commerce Commission as is shown by the following facts: 1st. Being under the impression that an export rate of four cents applied, they contended that this was the proper rate. 2d. They did not demand or receive delivery of the lumber at the station of the Texas and New Orleans Railroad Company for the delivery of local freight at Sabine, but caused it to be carried half a mile further to the wharves, docks and slips of the Texas and New Orleans Railroad Company, where it was unloaded into the slips. 3d. The regulations of the Railroad Commission of Texas permitted only forty-eight hours free time on cars for local delivery, whereas, 168 hours were permitted under the Interstate Commerce regulations for export traffic. They were allowed the privilege of the 168 hours free time on these shipments which was legally accorded to foreign traffic. The shipments constituted a continuous transit from the point of origin in the State of Texas through Sabine, the port of trans-shipment, to foreign countries beyond Texas, with only the necessary delay at Sabine for transfer to the connecting carriers, the ships; that is, changing from rail to water transportation. Under the terms of the sale, the seller, the Sabine Tram Company,

agreed to deliver the lumber at Sabine free of all freight charges and to obtain from the railroad company bills of lading for the different car loads as they were shipped out for the transportation of the lumber from Ruliff to Sabine, all of the way-bills showing upon their face that the lumber was not to stop at Sabine, but was to be exported to Europe. The movement of this lumber through Sabine and thence on the ships to European points was a typical and constantly recurring course of commerce that had been going on for years. All of the lumber sent out to the docks was loaded on the ships and exported to foreign countries. This course of commerce had been going on for years and was well known to the Sabine Tram Company and to W. A. Powell Company, Limited. Under these facts that are established without dispute, plaintiffs in error contend that the movement of all of the lumber mentioned in the petition of defendant in error constituted foreign and interstate commerce and was not subject to the jurisdiction and rates of the Texas Railroad Commission, but that it was the duty of plaintiffs in error under the law to collect the rate provided for in the regular tariff of rates published and filed with the Interstate Commerce Commission and in effect at the time

the different shipments of lumber were made and at the time the freight thereon was collected. Defendant in error, however, contends that the movement of this lumber from Ruliff to Sabine, notwithstanding it was bought for the purpose of export, and all parties knew that it was going to points in Europe, and notwithstanding it moved in continuous and unbroken transit from the point of origin to its European destination, that yet, inasmuch as the Sabine Tram Company agreed to deliver the same to W. A. Powell Company, Limited, at Sabine, free of freight charges, and to that end procured shipper's order bill of lading to itself at Sabine with notice to W. A. Powell Company, Limited, that this constituted these shipments intrastate commerce and that plaintiffs in error should not have collected more than the $6\frac{1}{2}$ cents per hundred pounds, the rate fixed by the Railroad Commission of Texas. It was further contended by defendant in error that in determining whether the movement, handling and shipment of this lumber constituted interstate and foreign commerce or intrastate commerce, that the court cannot look beyond the bill of lading that was issued at the time the shipments were made, and that the court cannot look to the real and true

facts, to determine whether such commerce is intrastate or foreign.

It is insisted for plaintiffs in error that the character of the commerce is to be determined by all of the facts and circumstances connected with the handling of the shipment and that while the bill of lading is evidence, to be considered with other evidence, in determining the character of the commerce, it is not conclusive. Otherwise, the shipper or carrier could, through the mere expedient of billing make that which was in fact interstate and foreign commerce, intrastate and domestic commerce and, thereby, the jurisdiction of the federal government would be defeated either by the private action of individuals or by the acts of State authorities.

The decision of the Court of Civil Appeals in this case is based upon a misconception of the decision of the Supreme Court of the United States in *G. C. & S. F. Ry Co. vs. Texas*, 204 U. S., 403. Prior to the decision of that case, the decisions of the Supreme Court of Texas, as well as the several courts of civil appeals, were very clear that the essential nature of the traffic could not be controlled by any mere device of billing, and that where the shipment moved in continuous transit from a point

within the State, to a point without the State or to a foreign country, it was not intrastate commerce subject to State authority.

The leading case is that of *Houston Direct Navigation Co. vs. Insurance Company*, 89 Texas, 1, where the question was whether cotton transported on a local bill of lading from Houston to Galveston, points wholly within the State of Texas, upon vessels plying between these two points, was intrastate or foreign commerce. It appeared in that case that the cotton had been destroyed by fire while in the possession of the Navigation Company. It had been sold to John Sherwood who resided in Liverpool and C. Menelas who was a foreign buyer. It was moved on the Barge Katinka operating between Houston and Galveston. The bill of lading recited that the cotton was received by the Navigation Company for delivery at Galveston to order, notify John O. Hayworth. It contained a stipulation that the Navigation Company should not be liable for loss by fire and that the contract should be completely executed and the liability of the Navigation Company terminated on delivery of the cotton to the Mallory Line at Galveston. Judge BROWN, now Chief Justice of the Supreme Court of Texas, in delivering the

opinion of the court states the questions involved as follows at p. 6 :

" 1. Was the Direct Navigation Company engaged in interstate commerce while transporting the cotton in question from Houston to Galveston? If so, then,

" 2. Did the provisions in its charter that it should be ' subject in the transportation of freight to the laws applicable to common carriers ' operate to make it liable under the laws of the State for the loss sustained, notwithstanding the limitation contained in the bill of lading and the exemption provided by the statutes of the United States? "

In discussing these propositions as to the first question, he says, at page 6 :

" No distinct and certain definition of interstate commerce has yet been fixed by the decisions of the courts, and perhaps none can be given which will apply to all cases. But the law as applicable to this case, deducible from the decisions of the courts, may be stated thus: When a commodity has been delivered to a common carrier, to be transported on a continuous voyage or trip to a point beyond the limits of the State where delivered, the character of interstate or foreign commerce attaches thereto."

After quoting from *Cas vs. Errol*, 116 U. S., 517, he says, at page 7:

"The questions to be determined are: Did the cotton in question when delivered to the navigation company start on its journey to a point outside of the State of Texas? Was its destination at that time fixed and determined upon, and was the carriage from Houston to Galveston a part of the voyage which was to be continuous? The facts of this case show that the owners of the cotton lived in Liverpool, and the cotton itself was, by their agents, put in transportation by delivery to the navigation company, to be carried by it to the city of Galveston, and there delivered to the Mallory Line, by which it was to be transported to New York, and thence by connecting line of steamers to the city of Liverpool. The bill of lading upon its face showed that the navigation company was to deliver the cotton to the Mallory Line at Galveston, at which time the liability of the navigation company should cease and that of the Mallory Line should attach. There can be no doubt that the destination of the cotton at the time of its delivery to the navigation company was fixed and determined, and the point at which it was destined for final delivery was beyond

the limits of this State. It is equally clear from the bill of lading and other testimony that a continuous voyage was contemplated, and the trip between Houston and Galveston was simply a part of that voyage. Upon this state of facts the cotton would undoubtedly come within the rule laid down in the case cited above, and would be classed as interstate commerce.

"But the evidence likewise shows that the Houston Direct Navigation Company gave a bill of lading to Galveston only and not a through bill to cover the entire route, and the charges for freight to Galveston and wharfage at that place were paid at the time that the cotton was delivered. Do these facts change the rule of law applicable to the case and constitute this a local shipment, as distinguished from interstate or foreign commerce?

"It has been generally held that where a carrier in one State receives a commodity for shipment by a continuous trip over its own line and connecting lines, giving a through bill of lading to the point of destination, with the provision that its own liability shall cease upon delivery to its connecting line, at a point within the State where it was received, such transportation is to be considered as interstate commerce, and the carrier is but

one of several agencies employed (*Railway vs. Sherwood*, 84 Tex., 135). The fact that the bill of lading given by the Direct Navigation Company was only to Galveston establishes simply that the liability of the company terminated at that point, and has the same effect, and no more, as if a through bill had been given by the receiving carrier, with the stipulation that its liability should terminate when delivered to the connecting carrier. The effect of such bill of lading as last named would be to make it, although a through bill upon its face, in effect a separate bill, so far as the liability is concerned of each carrier engaged in the transportation.

"We do not understand that it is necessary that all of the carriers engaged in an interstate or foreign shipment shall be parties to the contract of shipment for the entire route. In fact, as we understand the decisions, the character of the commerce is not affected by the terms of the contract of the carrier as it relates to liability for the freight, but only in so far as it shows that it is or is not a part of the continuous carriage from the beginning point to the point of destination (*The Daniel Ball*, cited above; *Harmon vs. Chicago*, 35 Am. & Eng. Corp. Cases, 654; *Foster vs. Davenport*, 22 How., 244). The last two

cases cited involved the question as to whether or not tugboats, engaged in towing vessels which were themselves engaged in interstate commerce, were to be considered as likewise engaged in such commerce. In each case it was held that such tugboats, although operating locally and within the limits of a State, were to be considered as engaged in interstate commerce, and not subject to the laws of the State. The tugboats were in no sense parties to the contracts for transportation, but were simply agencies employed therein. * * *

"We conclude from the authorities and the facts in this case that the transportation of the cotton by the Direct Navigation Company from Houston to Galveston was interstate or foreign commerce, and that its liability for the loss must be determined by the rules of law established by Congress, in so far as such rules have been prescribed, unless the provision of the charter, before quoted, operates to subject the corporation in the carriage of interstate commerce to the statutes of the State instead of the laws of Congress."

The shipper in that case, as in this, contended that inasmuch as a local bill of lading was obtained from the Navigation Company for the

transportation of the cotton from Houston to Galveston and that the freight from Houston to Galveston was then paid, that the shipment constituted intrastate and not interstate commerce. While the bill of lading showed on its face that the cotton was to be delivered to the Mallory Line, there was nothing in the bill of lading to show that the Mallory Line operated between points in Texas and points beyond the State or to show that it did not operate entirely between points in the State. This was shown, however, by other evidence upon the trial. The bill of lading simply provided for the carriage of the cotton from Houston to Galveston and for its delivery to the Mallory Line. On the trial it was shown that one of the purchasers of the cotton resided in Liverpool and that the other purchaser was a foreign buyer, buying cotton in Texas to be shipped to foreign countries, and that the Mallory Line was engaged in operating vessels between Galveston and New York, and that it was the intention when the cotton was delivered to the Navigation Company that when it reached Galveston it should be delivered to the Mallory Line and carried by it to New York and there delivered to some steamships which would carry it to Liverpool. In determining whether the

movement of the cotton constituted intrastate or foreign commerce, the court did not confine the evidence to the bill of lading, but determined the question from all the facts.

This case has been continuously followed by the Texas courts. In *State vs. G. C. & S. F. Ry. Co.*, 44 S. W., 542, the point is again directly raised. There was a State commission rate of $22\frac{1}{2}$ cents per hundred pounds on sheep from San Angelo, Texas, to Fort Worth, Texas, which was a lower rate than was the interstate rate for the same movement when the sheep were to be shipped beyond the State. The plaintiff in that case demanded cars for transportation of his sheep from San Angelo to Fort Worth. The railway company ascertained that his real purpose was to ship, first to Fort Worth, and then from Fort Worth beyond the State. The railway company in a written communication to the plaintiff stated that it would handle the sheep from San Angelo to Fort Worth if that was their final destination, but that if after arrival at Fort Worth it was found that the shipment was intended for a point outside of the State, it would not surrender the shipment until the interstate rate to Fort Worth was paid. The shipper declined to accept cars on these

terms and brought suit to recover statutory penalties for refusal of the carrier to furnish them. The court found that there was no local market at Fort Worth for the number of sheep involved; that the purpose of the shipper in demanding the cars was to ship them to a market outside of the State and that there was no reason for interrupting the shipment after it was begun for a longer time than was reasonable to unload, give proper attention and re-load on some other road at Fort Worth to complete the haul to the point without the State. The court, following the *Direct Navigation Company* case (89 Tex., 1), held that the shipment from point of origin, San Angelo, was interstate commerce and that the State regulation did not apply, citing also with approval *Cutting vs. Navigation Company*, 46 Fed., 641, hereinafter referred to.

G. W. T. & P. Ry Co. vs. Barry, 45 S. W., 814, was a suit for excessive freight charges and penalties under Article 4575 of the Revised Statutes of Texas. In that case, the cattle were delivered to the carrier whose line extended from Goliad to Victoria, at the former place, consigned to parties at Chicago. They were destined to Chicago and were to be forwarded from Goliad to that place by appellant

and connecting carriers by continuous shipment. Appellant, however, carried them only to Victoria, limiting its liability to its own line. A through rate was charged to be paid to the last carrier at Chicago. The Court said at p. 815:

"Since the decision of the Supreme Court in the case of *Houston Direct Navigation Company vs. Insurance Company of America*, 89 Texas, 1, no doubt can be entertained that the shipment was an interstate one and constituted interstate commerce."

State vs. Southern Kansas Railway Company of Texas, 49 S. W., 252, is in point. The facts in that case were as follows: On September 13, 1895, Stump & Weaver, partners, were engaged in the mercantile business at Miami, Texas, and John Haggart was engaged in like business at Panhandle, Texas, 50 miles distant from Miami, both parties handling coal at retail. On that date, Stump & Weaver entered into a contract with Haggart to purchase coal from him f. o. b. cars of the Southern Kansas Railway Company of Texas at a fixed price. Soon after this contract was entered into, to-wit, about September 21, 1891, Stump & Weaver ordered one car of coal from Haggart to be delivered f. o. b. cars of Southern Kansas Railway Company of Texas

at Panhandle, billed to Stump & Weaver at Miami. After the car of coal was ordered by Stump & Weaver of Haggart, the latter purchased the same from parties in the State of Colorado and had it consigned to John Haggart at Panhandle, Texas, and upon its arrival at Panhandle, it was transferred from the cars in which it was shipped to Panhandle to the cars of the defendant road and billed to Stump & Weaver at Miami, the freight to Panhandle being paid by Haggart. This was done by all parties so that they might receive the benefit of the rate of freight from Panhandle, Texas, to Miami as established by the Texas Railroad Commission which was less than the through rate. When Haggart purchased the coal in the State of Colorado, he intended it to be shipped to Stump & Weaver at Miami. He did not have the coal on hand when he contracted with Stump & Weaver and when the coal was ordered by them, it was contemplated by both parties that Haggart would purchase the coal in another State and ship the same to Miami, billing it first to Haggart at Panhandle and there reload it and deliver on board of defendant's cars billed to Stump & Weaver at Miami. The agents of the Southern Kansas

Railway Company of Texas demanded the interstate rate which exceeded the State rate and suit was brought for the excess and for penalties. It was held that the shipment in question was interstate commerce from the time it left the mines of the State of Colorado until it reached its final destination at Miami, Texas, and, therefore, was not subject to the rates fixed by the Railroad Commission of Texas.

State vs. I. & G. N. R. R. Co., 71 S. W., 994, presented a case where the carrier which was transporting cotton from a point within the State of Texas to Galveston on a local bill of lading disregarded the compress regulations of the Railroad Commission of Texas and was sued by the State for penalties. The court, citing the *Direct Navigation Company case* (89 Tex., 1), says at p. 222 :

"Applying these tests to the shipment in this case, we must conclude that it was a foreign shipment and not subject to the Commission regulations. This court has formerly held that the form of the bill of lading does not determine the character of the shipment. *State vs. R. R. Co.*, 49 S. W., 252; *State vs. R. R. Co.*, 44 S. W., 542."

G. C. & S. F. Ry Co. vs. Fort Grain Company, 72 S. W., 419, is also directly in point. This was a shipment originating in St. Louis, the final point of destination being San Angelo. The original bill of lading upon which the goods were shipped named Texarkana, Ark., as the terminal point. They were there switched over to the Texas side and new bills issued to San Angelo. The court below charged that in order to constitute the shipment a through shipment, the bill of lading must be a through bill. In other words, the form of the bill of lading was made controlling. The court said at p. 420:

" This charge is complained of in appellant's ninth assignment of error. This definition of an interstate shipment is not accurate. The shipment may be interstate, although transported by virtue of numerous bills of lading. The original bill of lading upon which the goods were shipped mentioned Texarkana, Ark., as the terminal point. There is evidence to the effect that the goods were delivered at Texarkana, Texas, and were there re-billed and a new bill of lading issued upon which the property was finally transported to its destination. If the purpose and intention was when the goods were shipped from St. Louis

that their final destination was Copperas Cove and San Angelo, it would be an interstate shipment, notwithstanding the transportation was not upon a through bill of lading. * * * If when the corn was started or before it reached Texarkana it was the purpose and intention that the corn in question should be transported to its final destination, that is, Copperas Cove and San Angelo—the transportation would be interstate and not domestic, although the plaintiff may not have acquired title until after the corn reached Texarkana, Texas.”

In an additional opinion in the same case, 73 S. W., 845, the court said at p. 846 :

“ In stating in the original opinion that the intention and purpose of the shipper should be looked to in order to determine whether the transportation was domestic or interstate, we did not intend to convey the idea that the shipper or owner could not alter his previous intention and end the shipment before it reached its original destination; but what we meant was that if the purpose and intent in starting the shipment was that it should be transported from one state to the place selected as its final destination in another state and such purpose was not

abandoned, the shipment would be interstate although there might be a temporary break in the transportation with a view of transferring the shipment from the possession of one carrier to another, even though each carrier upon receiving the commodity transported the same upon its own bill of lading."

It was argued before the trial court and the Court of Civil Appeals that this Court in *G. C. & S. F. Ry Co. vs. Texas*, 204 U. S., 403, had laid down a new rule; that the Texas cases cited no longer applied and that the character of the commerce under that decision is to be determined by reference to the bill of lading alone. It is submitted that the case cannot be so construed. There two carloads of corn had originated at Hudson, South Dakota, consigned to the Harroun Commission Company of Kansas City at Texarkana. Subsequently, Sailor & Barnett at Goldthwaite agreed to buy from the Hardin Grain Company at Kansas City two carloads of corn. The Hardin Grain Company did not have the corn and contracted for the same with the Harroun Commission Company, who, as stated, had previously ordered corn shipped from Hudson to Texarkana and who agreed to fill the

Hardin Grain Company's order with this same corn. The corn reached Texarkana, remained there five days and was then re-shipped by one F. L. Adkins in behalf of the Hardin Grain Company to Sailor & Barnett at Goldthwaite. The court held that the shipment from Texarkana to Goldthwaite was a local shipment, subject to the rates of the Railroad Commission of Texas. When the corn originated at Hudson, S. D., the ultimate and final destination was Texarkana. When it reached that point, it had arrived at its final destination and the interstate journey was completed. There was an entire change in the title to the consignment as well as in the parties to the contract. In the decision of this case by the Supreme Court of Texas, *G. C. & S. F. Ry. vs. State*, 97 Texas, 274, there is no intention to overrule the *Direct Navigation Company* case above cited. Chief Justice GAINES says at page 285:

"We are of opinion that as applied to the matter to be determined in this case the carriage of corn from Texarkana to Goldthwaite should be deemed independent of and wholly disconnected from its transportation to Texas from South Dakota or Kansas City. The nearest approach to a decision

of this question by this court is found in the following cases:

Houston Direct Nav. Co. vs. Ins. Co.,
89 Tex., 1.

State vs. Railway, 44 S. W., 542."

There is nothing in the opinion to indicate any intention to overrule the *Direct Navigation Company case* (89 Tex., 1) or those cases following its authority. This is rendered quite evident from the recent case of *Wood-Hagenbarth Cattle Company vs. G. H. & S. A. Ry Company* (146 S. W., 538) decided by the Supreme Court of Texas, May 1, 1912. In that case, there were shipments of cattle originating at Valentine in the State of Texas, their final destination being Columbus, New Mexico. The cattle moved on local bills of lading over the G. H. & S. A. from Valentine to El Paso and were there rebilled over the El Paso Southwestern Railway to the point of ultimate destination. The intention of the shipper was to send the cattle from the point in Texas to the point in New Mexico. He billed them to himself, however, at El Paso where the G. H. & S. A. connected with the El Paso Southwestern Railway for the express purpose of securing the State rate which was lower than

the proportional interstate rate. Arriving at El Paso, the cars were set over on the interchange track and were taken up by the El Paso Southwestern and carried to ultimate destination. The G. H. and S. A. collected the interstate rate and the shipper sued for overcharge and for penalties. The Court of Civil Appeals at San Antonio, basing its decision upon the decision of the Court of Civil Appeals in the case at bar as reported in *T. & N. O. R. Co. vs. Sabine Tram Co.*, 121 S. W., 256, and on the *Texarkana case*, 204 U. S., 403, held that the bill of lading, that is to say, the contract of transportation controlled and that the shipment was intrastate, rendering judgment for the overcharge and for penalties. The Supreme Court of Texas, however, on writ of error, reversed and rendered the cause in favor of the carrier, holding that the traffic was interstate. The court said, at page 540:

"As to whether the movement of the cattle from Valentine to El Paso was an interstate or intrastate shipment, must be determined by the following questions: What was the ultimate destination of the shipment at the time it was made? Though the ultimate destination may have been

without the State, was there any break or interruption in the journey by any delivery of the cattle by the carrier to the consignee at El Paso? If at the time the shipment originated its final destination was without the State, and it moved to such destination in a continuous and uninterrupted journey, unaccompanied by any delivery by the carrier to the consignee within the State, it was clearly an interstate shipment under the well established rules of this court upon this subject. On the other hand, if there was a delivery of the cattle by the carrier to the consignee within the State, it was an intrastate shipment, notwithstanding it may have been the intention of the shipper at the time the shipment was made that it should be transported to a point without the State as its ultimate destination.

"In this case, Columbus, New Mexico, was fixed and determined upon by the shipper as the destination of the cattle both before and at the time they were shipped. The course of dealing between Kingsbury and the railway companies in which he arranged for the cars, makes it plain that his purpose was to ship the cattle, not to El Paso, Tex., but to Columbus, New Mexico, direct and by a continuous and uninterrupted journey, using the line of plaintiff in error

from Valentine to El Paso for one stage of the journey and the line of the El Paso & Southwestern Railway from El Paso to Columbus for its completion. It is equally plain from the facts found by the trial court that the shipment was thus made ; that no delivery of the cattle by the plaintiff in error at El Paso was ever contemplated or effected ; that before the arrival of the cattle at El Paso, Anthony who was in charge of the shipments as the representative of the defendant in error, directed that the cars be delivered to the connecting carrier to which they were delivered, and by it carried to destination, making a continuous journey from Valentine, Texas, to Columbus, New Mexico, without break or interruption. * * *

"While Anthony directed plaintiff in error to set the cars over on the siding of the connecting carrier when they arrived at El Paso, the custody of the cattle was never out of the carriers and his action in this respect was perfectly consistent with their custody of them. Nor does the fact that the bills of lading issued by the plaintiff in error provided for the carriage of the cattle only to El Paso and that there Anthony rebilled them over the line of the connecting carrier alter the rule of law applicable to this case or constitute this a local shipment

as distinguished from an interstate shipment. It is not necessary that all the carriers engaged in an interstate shipment shall be parties to the contract of shipment for the entire route. *Houston Direct Navigation Company vs. Insurance Company*, 89 Texas, 1. * * *

"The case is plainly distinguishable from that of *G. C. & S. F. vs. State*, 97 Texas, 274. The facts of that case are familiar and it is unnecessary to recite them any further than to say that there the Hardin Grain Company, having made a contract with parties at Goldthwaite, Texas, for the delivery of two carloads of corn at that place, in order to comply with their undertaking, contracted to purchase the same quantity of corn from the Harroun Commission Company which the latter company had previously arranged to ship from South Dakota to Texarkana, Texas, and which was in fact shipped from South Dakota to Texarkana; it being intended by the Hardin Grain Company that the corn would be shipped from Texarkana to Goldthwaite as soon as practicable after its arrival at Texarkana as was done. This court held that the shipment from Texarkana to Goldthwaite was not an interstate shipment for the reason that although the

intention of the Hardin Grain Company when it contracted to purchase the corn from the Harroun Commission Company may have been, as stated above, the destination of the corn as fixed and determined by its consignors and then owners when it started upon its journey was not Goldthwaite, but Texarkana, and when it reached that point, the carriage so far was at an end.

"It is likewise as clearly distinguishable from the case of *T. & P. R'y Company vs. Taylor*, 126 S. W., 1118. For in the opinion rendered by Judge BROWN in that case the holding that the shipment there involved was intrastate was rested upon the fact that an actual delivery of the cattle was made to the shipper at El Paso, although they were finally shipped to a point without the State. In our view, the case is governed by the rules announced in the opinion rendered in *Houston Navigation Company vs. Insurance Company of North America*, *supra*; and in consonance with the holding in that case, it is our opinion that the shipments from Valentine to El Paso were interstate in their character."

This latest expression of the Supreme Court of Texas, therefore, not only clearly differen-

tiates the *Texarkana case* (204 U. S., 403), but is a clear and distinct reaffirmation of the doctrines of the *Houston Direct Navigation Company case* (89 Tex., 1) which the Court of Civil Appeals in the case at bar deemed to have been modified by the later opinion of this court in the *Texarkana case*.

The latest decision of this Court is that of *Railroad Commission of Ohio vs. Worthington, Receiver, Wheeling & Lake Erie Railroad*, 225 U. S., 101. There was a rate of 90 cents per ton on Lake cargo coal shipped from certain counties in Ohio constituting No. 8 Coal District to Cleveland and Huron for trans-shipment thence by vessel to interstate points. The rate on coal for commercial use at the same points was \$1.00 per ton. The Ohio Railroad Commission made an order prescribing a rate of 70 cents on Lake cargo coal from No. 8 Coal District and suit was brought to enjoin the order as an interference with interstate commerce. The Ohio Commission relied on *G. C. & S. F. Ry. Co. vs. Texas*, 204 U. S., 403. This court, however, held that the billing did not control nor did the fact that this coal was sometimes concentrated in large quantities before being delivered to vessels, but that the essential nature of the traffic was in-

terstate and the order of the Railroad Commission of Ohio was beyond its jurisdiction (see opinion also of Circuit Court of Appeals for the 6th District in this case, *R. R. Com. of Ohio vs. Worthington*, 187 Fed., 965).

If the mere form of the shipping contract is to be the absolute test of the character of commerce, then indeed is the Federal control of interstate and foreign commerce an idle name and each State on the coast at which is located a port of trans-shipment can monopolize its commerce. The area of Texas is approximately 274,000 square miles. It produces 4,000,000 bales of cotton. Approximately all of this cotton flows out to interstate and foreign ports. The greater part of this is shipped on local bills of lading to the port of Galveston. No cotton is consumed or manufactured at Galveston. With only such delay as is incident to the transfer of the cotton from cars to ship, it moves directly either to coastwise or foreign points. Can it be contended that this vast current of interstate and foreign trade can be divested of its essential nature by the mere device of a local bill of lading, simply because the rail transportation is wholly within the limits of the particular State?

It would seem that the first section of the Act

to Regulate Commerce was intended especially to meet this exact situation, for the Act is declared to apply to transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment. When the Act undertakes to define the intrastate jurisdiction as transportation wholly within one State, it is careful to exclude from the exception property shipped to or from a foreign country from or to any State or territory. This situation was before this Court in *Southern Pacific Terminal Company vs. Interstate Commerce Commission*, 219 U. S., 498. In that case, the Terminal Company had leased a wharf to one E. H. Young, an exporter of cotton seed cake and meal. Young paid no wharfage and it was contended by his competitors that, inasmuch as the rent of the wharf was less than the wharfage which he would have been compelled to pay at current rates, the contract operated as a discrimination against them. The proposition was made that the traffic of Young was not subject to the jurisdiction of the Interstate Commerce Commission; that practically all of the cotton seed cake which he subsequently exported in the shape of cotton seed meal moved from the points within the

State to Galveston on local bills of lading consigned to himself; that he concentrated this cake on the platform leased to him in large quantities, took exclusive possession of it, of course, and manufactured the cake into cotton seed meal. That after its arrival at Galveston and the delivery to him and after its manufacture into the new form of cotton seed meal, he sold the same to parties in Europe and shipped the same directly from his wharf to Europe by steamer, often of his own charter. It was contended, therefore, that the rail portion of the transit was wholly within the State; that the journey from the point within the State to the foreign port was not continuous; that the State contract of transportation was consummated; that the owner and shipper took complete and exclusive possession of the property and changed its form by manufacturing it into cotton seed meal; that the rail portion of the transit was, therefore, purely intrastate and the transit to Europe being wholly by water on independent bills of lading, the jurisdiction of the Interstate Commerce Commission could not attach. That case was far stronger in all the facts tending to sustain the intrastate jurisdiction than the present case where the transit is continuous and unbroken,

where the property is intended for a particular ultimate consignee in Europe to whom it has been sold before the transit begins and where all parties to the contract, knowing that the lumber is for export, intend that it shall go forward in unbroken and continuous movement from point of origin to ultimate destination in Europe. This Court, however, speaking through Mr. Justice McKENNA, says at p. 527 :

" It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway, they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for such purpose. The case, therefore, comes under *Coe vs. Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign commerce when they have 'actually started in the course of transportation to another State or delivered to a carrier for transportation.' In *G. C. & S. F. Ry. Co. vs. State of Texas*,

204 U. S., 403, the facts are different and the case is not apposite."

A case directly in point, also, is that of *Railroad Commission of Louisiana vs. Texas & Pacific Railway Company* (144 Fed., 68), which, was first before the Circuit Court of Appeals for the Fifth District on an appeal from the Circuit Court of the United States for the Eastern District of Louisiana, granting a preliminary injunction against an order of the Railroad Commission of Louisiana. It was again before that Circuit Court, where the preliminary injunction was made permanent on final hearing, (*T. & P. Ry. Co. vs. R. R. Com. of La.*, 183 Fed., 1005), the decree of the Circuit Court being affirmed by the Circuit Court of Appeals in a memorandum decision (*R. R. Com. of La. vs. T. & P. Ry. Co.*, 184 Fed., 989). The facts of that case as stated by Judge FOSTER, 183 Fed., 1005, are that the Texas & Pacific Railway Company and other carriers had filed with the Interstate Commerce Commission a schedule of rates for the carriage from points in Louisiana to New Orleans on export shipments. The Railroad Commission of Louisiana had also fixed a schedule of different and lower rates on local shipments between the same points. By

order of the Railroad Commission of Louisiana, four days' free storage was allowed on local shipments and twenty days on shipments intended for export. The railroads acquiesced in allowing twenty days free storage on freight intended for export and also delivered same at shipside free of charge for switching. Thereafter, some twenty-one cars of staves and poplar logs intended for export were shipped from interior points in Louisiana to New Orleans on bills of lading of substantially the local form. On arrival, consignees demanded and received the free storage accorded export shipments and in due course at their request the freight was switched to shipside without additional cost and was never out of the physical possession of carriers until actually delivered to the ship. In collecting charges, the carriers applied the higher rate filed with the Interstate Commerce Commission for export shipments. On complaint of the consignees, the Railroad Commission of Louisiana assessed certain fines exceeding \$2,000.00 against the carriers who sought to enjoin the collection thereof. The carriers contended that the shipments constituted foreign commerce; that the Interstate Commerce Commission had jurisdiction over their movement and that the Railroad Commission of Louisiana was without jurisdiction. The Rail-

road Commission of Louisiana relied upon *G. C. & S. F. vs. Texas*, 204 U. S., 403. The carriers relied upon the cases of

The Daniel Ball, 10 Wall., 557.

Coe vs. Errol, 116 U. S., 524.

Swift & Co. vs. U. S., 196 U. S., 375.

Armour Packing Co. vs. U. S., 209 U. S., 56.

General Oil Co. vs. Crain, 209 U. S., 211.

Cutting vs. Florida R'y & Navigation Co., 46 Fed., 641.

The case had been referred to a Master in Chancery who reported that the traffic was intrastate and that the Railroad Commission of Louisiana had jurisdiction. In sustaining the exceptions of the carriers to the report of the Master and rendering decree permanently enjoining the collection of the fines assessed by the Railroad Commission of Louisiana, Judge FOSTER distinguished the *Texarkana* case (204 U. S., 403) upon the same grounds as did the Supreme Court of Texas in the *Wood-Hagenbarth* case (146 ^{S.W.} U. S., 538) above referred to. He said at p. 1007:

"I do not consider the facts in the Texas case analogous. There, an interstate shipment terminated at Texarkana, Texas. The

freight was paid. Delivery was accepted and the goods changed ownership. An entirely new shipment was then made to Goldthwaite, Texas. The goods were intended for consumption in Texas and the shipment began and ended in Texas. The owners of the goods intended to make an intrastate shipment for the purpose of obtaining the local rate. They made their contract of carriage accordingly and the whole contract was contained in the bill of lading. By the intention of the owners, by the contract of carriage and by the ultimate disposition of the goods, the shipment was intrastate.

"In the instant case, the shipments originated in Louisiana, but they did not terminate at New Orleans. The consignees did not accept delivery at all. For the purpose of obtaining the free storage and free switching allowed only in connection with the export rate, they notified the railroad to hold the goods for export and subsequently required delivery at shipside to the connecting carrier. In all of this the railroad acquiesced. The stoppage at New Orleans was merely incidental to the ultimate exporting of the goods. New Orleans was never intended to be and in fact never did become the final destination. From the time the goods started from the interior point, they were

intended for foreign consumption and there was one continuous passage until they reached a destination out of the United States. By the intention of the owners and the ultimate disposition of the goods, it was an export shipment. In every respect, the facts differ from those of the Texas case, except as to the form of the bill of lading. In the Texas case, I do not understand that the Supreme Court intended to do more than decide the case presented on the facts as found by the Texas courts, and I do not consider the decision at all in conflict with those cited. The whole contract of carriage was expressed in the bill of lading, yet the Supreme Court in holding that the contract determined the character of the shipment was careful not to confuse the bill of lading with the contract. Necessarily a bill of lading like any other written contract may be altered or amended by subsequent verbal agreement, except as to things against public policy or prohibited by law or valid regulation.

"In the case at bar, had the railroad issued through bills of lading from the interior points to the foreign ports, it is conceded by defendants the State Commission could not have imposed the fines, yet in that case the service would have been

exactly the same as was here rendered, with the exception that the railroad would have selected the ocean carrier instead of the shipper doing so. I can see no difference in the two cases. It is the trend of modern legislation to allow the shipper great latitude in routing his goods. In the statute of 1910, known as the Mans-Elkins Act, the interstate shipper is given the right to designate over which of two or more connecting roads his property shall be transported to destination. * * * It is manifestly of great benefit to the exporter to be allowed to accumulate freight at a seaport and to hold it for a reasonable time without additional cost. Ocean rates vary according to the supply and demand and these privileges give advantage to the exporter in securing favorable rates for the water carriage. I can conceive of no reason why the railroad and shipper, instead of getting out a through bill of lading to the foreign port, should not agree to apply the export rate with its incidental privileges to all shipments which are in reality intended for export and to allow the shipper to select the ocean carrier, provided of course no fraud or violation of law or public policy is contemplated. If they can do so by express agreement, they can certainly do so by tacit

understanding or acquiescence. In the instant case, both parties have treated the shipments as export shipments and that is what they in fact were. It is not even hinted there was any evasion of law or violation of public policy by their so doing. Therefore, I do not think the form of the bill of lading should absolutely fix the status of the freight, as I consider the contract of carriage should be held to be what the parties really intended it to be.

"Notwithstanding my great respect for the opinion of the Master in this case I must disagree with him as I am convinced that as a matter of fact, as well as by the intention of the owners and the contract of carriage, the freight in the instant case was an export shipment, actually moving in foreign commerce and the Railroad Commission of Louisiana was without jurisdiction."

This case cannot be differentiated from the case at bar. The uncontradicted testimony shows that the actual movement to and through Sabine was identical with a movement that would have been made under a through bill of lading. The evidence is uncontradicted that the docks and wharves are more than half a mile distant from the station of the Texas and New

Orleans Railroad Company for local delivery; that if treated as a domestic shipment, the switching rates of the Railroad Commission of Texas would have applied; that the interstate switching rate was \$2.50 per car, but that this was absorbed out of the export rate of 15 cents. That the free time permitted by the Texas Railroad Commission regulations on local shipments was 48 hours while on export shipments under the Interstate Commerce Commission rules it was 168 hours and the shipper received the benefit of the longer period. There was never any actual delivery of the shipments to the owner at Sabine, except the delivery into the hold of the ships chartered by W. A. Powell Company, Limited. The Sabine Tram Company when it was under the impression that the interstate rate was four cents per hundred, demanded that rate. The shipment was intended for Europe before it began and indeed the purchase from Sabine Tram Company was made to comply with sales already made in Europe. All arrangements for a continuous journey from point of origin to Europe had been made before the transit began. Insurance had been procured and ships chartered. These ships were waiting at the wharves when the shipments arrived.

The Sabine Tram Company knew that the lumber was intended for export. It was of a peculiar character intended only for that trade. W. A. Powell Company, Limited, was engaged exclusively in the export trade. There was no local market for lumber at Sabine. The Sabine Tram Company had never shipped a car there for local consumption. To the contrary, there flowed constantly through that port a strong and continuous current of export traffic in lumber. The Sabine Tram Company prepared the bills of lading. The initial carrier, Texarkana and Fort Smith Railway Company, could only have known of the ultimate destination of the lumber from the Sabine Tram Company, and we accordingly find that every way-bill is marked "for export to Europe." These facts make the case practically identical with the *Louisiana case* (183 Fed., 1005) and with the *Ohio case* (225 U. S., 101) recently decided by this Court and above referred to. This Court in *Armour Packing Company vs. United States*, 209 U. S., 56, distinctly held that the character of the commerce cannot be determined by the bill of lading, and said, at p. 78:

"The purpose of Congress to embrace the whole field of interstate commerce is

made apparent by the exclusion only of wholly domestic commerce in the last clause of section one of the original act of 1887, and in the declaration of the scope and purpose of the act, declared in its title. *Texas & Pac. Ry Co. vs. Interstate Commerce Commission*, 162 U. S., 197, 211. There is no attempt in the language of the act to exempt such foreign commerce as is carried on a through bill of lading; on the contrary, the act in terms applies to the transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment.

"What reasonable ground is there for supposing that Congress intended to exercise no control over such commerce if it happens to be billed through to the foreign port? Such construction would place such important commerce shipped in the United States to a port for trans-shipment abroad wholly outside the restrictions of the law, and enable shippers to withdraw such commerce from the regulations enforced against other interstate commerce by the expedient of a through bill of lading. Take the present case. The through rate is obtained by adding the ocean rate to the inland rate. There is no contractual relation between

the railroad carrier and the ocean carrier. The ocean rate is uncertain and variable, depending upon time of sailing and available space. The accommodation for ocean shipment was obtained by the shipper and by it made known to the inland carrier. We think the language of the statute, read in the light of the manifest purpose of its passage, shows the intent of Congress to bring interstate commerce within the control of the provisions of the law up to the time of ocean shipment. This construction is reinforced by the broad provisions of section 6 of the act as to publishing schedules, showing rates, fares, and charges, and filing the same with the Interstate Commerce Commission. That such rates, notwithstanding through bills of lading, were subject to the provisions of the act, was held, upon full consideration, and rightfully, as we think, by the Interstate Commerce Commission. *Re Tariffs vs. Export and Import Traffic*, 10 I. C. Rep., 55."

If the shipper could not through the expedient of a through bill of lading withdraw the commerce from the control of the Interstate Commerce Commission, how can it be said that he could accomplish that purpose by the expedient of a local bill of lading? The Interstate Commerce Commission

has control over all interstate commerce from point of origin to destination. The Act gives it control over foreign commerce from the time it leaves its point of origin until it passes beyond its jurisdiction at the point of trans-shipment. It has control from the point of origin to the port of trans-shipment or rather over that part of the haul that is in the United States, whether that part of the haul is entirely within one State or passes through portions of more than one State and its jurisdiction cannot be evaded through any mere expedient of local or through billing. Commerce among the States and between the United States and foreign countries "is not a technical legal conception, but a practical one drawn from the course of business."

In *Cosmopolitan Shipping Company vs. Hamburg American Packing Company*, 13 I. C. Rep., 266, Commissioner Lane, delivering the opinion, after quoting the concluding part of section one of the Interstate Commerce Act, says at p. 273 :

"By this language, Congress sought to certainly exclude purely State traffic and to as certainly include foreign traffic, even when its movement was wholly within a State. Therefore, the rates on cotton moving for export from Dallas, Tex., to Galveston, although

the movement is wholly within a State, are subject to Federal regulation."

Again in *Baer Brothers Mercantile Company vs. Missouri Pacific Railway Company, et al.*, 13 I. C. R., 329, referring to the Federal control over foreign commerce the Commission says at p. 333 :

" It would have control of transportation from the United States to a foreign country, even when the movement in the United States was entirely within a single State. If for example traffic was taken up at Buffalo by the New York Central and thence carried to New York City as a final destination, this service would be entirely within the State of New York and not subject to Federal control ; but if that carriage was of property in transit from Buffalo to a foreign country, then it would fall within the purview of national supervision. The purpose of the proviso was to make plain the exact extent of the jurisdiction of the Commission. When the transportation is wholly within a State, that jurisdiction attaches; provided, the carriage is part of a through movement to some foreign country."

In the case of *Cotton Rate Advances from Texas Points to New Orleans*, 23 I. C. R., 404,

decided May 6, 1912, the Commission said at p. 410:

"It appears that little or no cotton is manufactured at Galveston and that shipments to that port are all, or substantially all interstate shipments or for export. . . . We hold that export traffic and export rates from Texas points to Texas ports are subject to the Act to Regulate Commerce and clearly within the jurisdiction of this Commission."

This was said by the Interstate Commerce Commission with full knowledge of the fact that the greater portion of the cotton crop of Texas moves to Galveston on local bills of lading.

See, also, *Denver & R. G. R. Co. vs. I. C. C.*, 195 Fed., 968 (decided April 9, 1912).

The Interstate Commerce Commission in the case of *In re Transportation of Sugar*, 22 I. C. R., 558, had before it the proposition from another point of view; that is to say, the sugar was imported into the United States and there was a rate filed with the Interstate Commerce Commission on this imported sugar from New Orleans to points within the State of Louisiana. This rate was challenged as discriminatory against certain refineries in New Orleans and other portions of Louisiana

and the Railroad Commission of that State intervened, questioning the jurisdiction of the Commission over the traffic in question, the tariff complained of being styled, "A local import tariff naming rates on sugar imported from foreign countries and from United States insular possessions through New Orleans or Port Chalmette." The *Texarkana case* (204 U. S., 403) was again invoked, but the Commission, relying upon *S. P. Terminal Co. vs. I. C. C.* (219 U. S., 498), said at p. 561:

"If this sugar were brought to New Orleans as it is, were there received by its owners or his agent and later as an independent transaction it should be shipped by rail to some point in Louisiana and did not move outside the confines of that State on such journey, it would hardly be claimed that such rail movement subjected the traffic to the provisions of our Act, but as has been noted, this traffic is not so handled. It leaves the foreign port with a full intention on the part of its owners and shippers to send it on to Gramercy by rail. There is no common arrangement between the water carrier and the railroad and the traffic does not move under a through bill of lading from the foreign port to Gramercy. But arrangements for its transportation to

Gramercy by rail are made before the vessel reaches New Orleans and under instructions of the agent and the owner of the sugar, defendant takes it from the wharf where it is left by the steamship company, loads it into its cars and transports it to Gramercy, thus carrying out the original intention entertained at the time the sugar is loaded in the vessel at the foreign port."

The case of *Cutting vs. Railway Company*, 46 Fed., 641, has been often cited and especially by the Texas courts. It there appears that certain orange growers in Florida shipped oranges to Calahan and Baldwin, the shipment being entirely within the State of Florida. The receiver of the road charged and collected 25 cents per box, while the Railroad Commission rate in that state was 15 cents per box. It was alleged that the receiver of the company had charged 10 cents in excess of the Commission rate and suit was brought to recover the excess. From the opinion of the court it appeared that neither Baldwin nor Calahan were places of importance, except from railroad connection. Neither was a market place for oranges nor a distributing point for such fruit. By shipping to Calahan and Baldwin and then re-shipping to points beyond the

State, the growers saved on the freight rate. The court, after reviewing the facts, reached the conclusion that the movement from point of origin to Calahan and Baldwin were parts of a through movement to points beyond the State and held that the traffic was not subject to the rates prescribed by the State Commission and that plaintiff, therefore, could not recover.

The language of this Court in *Swift & Company vs. United States*, 196 U. S., 375, is directly applicable. It was there said at p. 398:

"When cattle are sent for sale from a place in one State with the expectation that they will end their transit after purchase in another and when in effect they do so with only the interruption necessary to find a purchaser at the stock yards and when this is a typical constantly recurring course, the current thus existing is a current of commerce among the States and the purchase of the cattle is a part and incident of such commerce."

Attention is directed to the decision in *Shepard vs. Northern Pacific R'y Co.*, 184 Fed., 765, where it was held that where a State rate operated directly to control, regulate or burden interstate commerce, that such exertion of State authority

could not be maintained and while for the disposition of the present case it is not necessary for the court to go to such an extent, it at least indicates the extent of the control of the Federal authority over commerce wholly within the limits of a given State. The Interstate Commerce Commission by its order in *Railroad Commission of Louisiana vs. St. L. S. W. R'y Co. et al.*, 23 I. C. R., 31, asserts its right to control an intrastate rate made by the Railroad Commission of Texas between points wholly within the State when that rate operates to discriminate against points without the State. It is not necessary, however, for proper disposition of this case to carry the Federal jurisdiction to the extent asserted either by Judge SANBORN in the *Minnesota case* (184 Fed., 765) or by the majority of the Interstate Commerce Commission in the *Shreveport case* (23 I. C. R., 31). For in the case at bar, the jurisdiction rests clearly upon the terms of the statute and the facts unquestionably show that the traffic was foreign commerce, intended as such before the movement began, intended as such by shippers and carriers, treated as such by all parties and moving in continuous transit from point of origin to point of ultimate destination in Europe.

II.

The Plaintiffs in Error had the right to show upon proper pleading that the State rate of six and one-half cents was confiscatory.

The plaintiffs in error in paragraph 18 of their answer alleged that the State rate of six and one-half cents was confiscatory and would compel plaintiffs in error to perform the service at a loss; that the rate was, therefore, invalid and void as depriving plaintiffs in error of their property without due process of law and denying them the equal protection of the law. To this paragraph of the answer, defendant in error demurred on the ground that under the provisions of Article 4564 of the Revised Statutes of the State of Texas every order of the Railroad Commission of Texas was deemed to be conclusive in all actions between private parties and railway companies brought under the law and would be conclusively deemed to be just and reasonable until finally found otherwise in a direct proceeding brought for that purpose in accordance with the provisions of Articles 4564, 4565 and 4566. These articles are as follows :

“ART. 4564. In all actions between private parties and railway companies brought under

this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by Articles 4565 and 4566 of this chapter."

"ART. 4565. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so ap-

pealed shall have precedence in said appellate court of all causes of a different character therein pending ; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

" ART. 4566. In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable or unjust to it or them."

Under the provisions of these articles, defendant in error contended that this being a suit between private individuals the order could not be collaterally assailed. It will be observed that these articles apply merely to the justice or reasonableness of the order and do not reach a case where the order is an absolute nullity because of an invasion of a constitutional right. defendant in error recovers, not only for an alleged overcharge, but for statutory penalties that are almost double the difference in the freight rate. Plaintiffs in error allege that the order of the Railroad Commission under which this recovery is had is an absolute nullity as in conflict

with the Constitution of the United States and the answer is stricken out on demurrer upon the ground that they should have first attacked the order as unjust or unreasonable in a suit against the Railroad Commission of Texas filed at Austin. If the order is in conflict with the Constitution of the United States, it is not simply an unjust or an unreasonable order, but it is an absolutely void order and it is believed that no rights can accrue to it. It is submitted, therefore, that the articles in question do not apply, and that if they did, plaintiffs in error cannot be thus deprived of the right to assert a right under the Constitution of the United States.

Respectfully submitted with prayer that the case be reversed and here rendered in favor of plaintiffs in error.

MAXWELL EVARTS,
HIRAM GLASS,
H. M. GARWOOD,
Of Counsel for Plaintiffs in Error.

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No. 93.

Office Supreme Court, U. S.
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JAMES H. McKENNEY,
CLERK.

**In the Supreme Court of the
United States.**

OCTOBER TERM, 1912.

TEXAS & NEW ORLEANS RAILROAD COM-
PANY, TEXARKANA & FORT SMITH RAIL-
WAY COMPANY, AND UNITED STATES
FIDELITY & GUARANTY COMPANY,

PLAINTIFFS IN ERROR,

VS.

SABINE TRAM COMPANY, DEFENDANT IN ERROR.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE
FIRST SUPREME JUDICIAL DISTRICT OF TEXAS.

ARGUMENT FOR PLAINTIFFS IN ERROR.

S. W. MOORE,
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May It Please the Court:

At the times, and in the matters involved in this
suit, Sabine was, and still is, a port of trans-ship-

ment, located on the waters of the Gulf of Mexico, in the State of Texas. At, and for a long time prior to the time of the shipments involved in this cause, Sabine was an important port for the trans-shipment and exportation of lumber. All lumber originating in the interior and moving by rail to Sabine was carried by water, either to other States or to foreign countries. None of it was intended for, or in fact was consumed or resold at, Sabine.

The movement of lumber from interior points in Texas and elsewhere to Sabine, including the lumber involved in this cause, shipped by rail to Sabine, and thence on ships to foreign countries and other points beyond the State of Texas, was a typical and constantly recurring course that had been going on for years.

As to the particular shipments involved in this cause, the Court of Civil Appeals says:

W. A. Powell Company, Ltd., was engaged in buying lumber for export to different points in Europe, through the ports of Sabine and Port Arthur, both in the State of Texas. On August 28, 1906, having made sales to customers for future delivery in Europe of large amounts of heavy pine lumber, for the carriage of which steamships had in part already been chartered, to fill such contracts, W. A. Powell Co. bought of the Sabine Tram Company 500,000 feet of heavy pine lumber of certain dimensions, to be delivered during the months of September and October. The contract provided for delivery either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas, at the option of

the seller. The seller exercised the option to deliver at Sabine, a station on the line of the Texas & New Orleans Railway.

The Court of Civil Appeals then finds that the rate for the movement of the lumber from Ruliff to Sabine, filed with the Interstate Commerce Commission under the Act of Congress, known as Interstate Commerce Act, was 15c per hundred pounds. (Record, p. 6.)

The freight charges for the movement of this lumber from Ruliff to Sabine and thence out to the docks were paid by W. A. Powell Co., and the Court of Civil Appeals says:

W. A. Powell Company, Limited, regarded the shipments in controversy as export shipments, and demanded, expected and received the use of terminal facilities, additional free time and other privileges accorded to shippers of export freight under export tariffs.

The railway company knew, when the freight charges were collected, that the lumber was to be placed in its slips and exported to Europe on incoming ships, and the freight was believed by the officers and agents of the railroad company at the time the charges were collected to constitute foreign commerce, and to both permit and require the application of the rate fixed by the tariff on file with the Interstate Commerce Commission, and this rate was applied.

All the lumber in question was in fact unloaded from the cars by W. A. Powell Com-

pany, Limited, into the Texas & New Orleans Railroad Company's slips, or upon its docks, in reach of ships' tackle and loaded into the ships previously chartered for the purpose by W. A. Powell Company, Limited, which steamships carried same thence direct to Europe, where this lumber was applied upon contracts for sale in Europe made before the lumber began to leave Ruliff, and made in fact before the lumber was purchased from the Sabine Tram Company, and before it was sawed, and before the logs from which it was sawed left the State of Louisiana for the Sabine Tram Company's mill at Ruliff, in the State of Texas.

One of the ships actually waited at the docks at Sabine for the arrival of part of this lumber, which constituted a portion of its cargo.

The ship which carried the last of this lumber from Sabine to Europe was chartered by W. A. Powell Company, Limited, for this purpose after these lumber shipments began to arrive at Sabine, but before all of the shipments had left Ruliff.

None of this lumber remained in the slip at Sabine, or on the docks, except for the time necessary to await the arrival of the particular ship which had previously been chartered for the purpose and designated by W. A. Powell Company as the ship which was to carry that particular lumber from the port of Sabine to Europe.

Any shipment of lumber intended for export to Europe, and in fact shipped from

any point in Texas, to and through Sabine as its port of trans-shipment, could be contracted for, billed to and from Sabine, shipped, transported and handled in every particular just as was this lumber. (Record, pp. 6-7.)

Section 1 of the Interstate Commerce Act, in defining the transportation of property covered by the act, provides, among other things, the following: "and also the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment," and said section further provides as follows: "provided, however, that the provisions of this act shall not apply to the transportation of passengers or property . . . wholly within one State, and not shipped to or from a foreign country."

That Congress intended to and did assume control of the transportation of all property shipped from any point in the United States to a port of trans-shipment and then shipped to a foreign country, is, we submit, made manifest and absolutely clear in the language above quoted. And to make sure that Congress did not intend to release or waive its authority over the transportation of property between points in one State, it is provided that the act does not apply to such property as is transported between points in the same State and not shipped to a foreign country. Although the transportation of the property is between points in one State, if it is actually shipped to a foreign country, the movement of the property from a point in that State to a point of trans-shipment within the same State, constitutes

foreign commerce and is subject to the act of Congress regulating commerce.

The lumber involved in this suit was transported in like manner, that is, by rail, from Ruliff, a place in the United States, to a foreign country, and it was carried from that place to Sabine, a port of trans-shipment, and thence by ship to a foreign country.

The railroads and the W. A. Powell Company, Limited, who purchased and had the lumber shipped, regarded the movement of the lumber as export shipments, and all of the free time and other privileges accorded to shippers of export freight, as shown in the tariffs on file with the Interstate Commerce Commission, were demanded and received.

The Court of Civil Appeals, however, held that inasmuch as the lumber moved from Ruliff, a point in Texas, to Sabine, a port of trans-shipment, another point in Texas, on a local bill of lading, that that was conclusive evidence that the shipment was intrastate and not foreign commerce. In its opinion, the Court of Civil Appeals says:

While there are other incidental questions presented, the fundamental question involved in this appeal is whether the shipment of the lumber was a transaction falling under the definition of foreign commerce. If it was, then under the express provisions of the act establishing the Railroad Commission of Texas and prescribing its duties and authority, neither the rate fixed by such Commission nor the provisions of the statute, upon which alone the claim of Plaintiff rests, have any application and its suit must fail. (Art. 4280-1.)

Without pretending to discuss seriatim the several assignments of error and the propositions thereunder, we will dispose of the several questions which are therein presented.

In the view we take of the opinion of the Supreme Court of this State in the case of *G., C. & S. F. Ry. Co. vs. The State of Texas* (99 T. R., 274), and of the Supreme Court of the United States in the same case (204 U. S., 403), in their application to the question here involved, we are relieved of the necessity of a discussion of other cases either of our own Supreme Court or of the United States Supreme Court; the ultimate authority in the decision of such questions; upon the question involved, as it is presented by the record. Nor are we concerned with what may appear to be a conflict between the views there expressed and earlier decisions of either of said courts. (Record, pp. 8-9.)

In the case above referred to (204 U. S., 403) a shipment of grain was made from Hudson, South Dakota, to Texarkana, Texas. A bill of lading for the transportation of the grain from Hudson to Texarkana was issued. Whilst the grain was in transit, or before it reached Texarkana, there was a change of ownership, the new owner intending that when the corn reached Texarkana, Texas, he would reship it to Goldthwaite, Texas. And it was so reshipped on a local bill of lading from Texarkana to Goldthwaite. It was contended on the part of the railroad that the shipment from Texarkana to Goldthwaite was a part of the through

shipment from South Dakota. That contention was not sustained by either the Supreme Court of Texas or the United States Supreme Court. It was held by said courts that Texarkana was the final destination of the first shipment. Facts in that case showed that when the grain was delivered to the railroad company, and when it left Hudson, South Dakota, Texarkana was intended as the final destination. When the grain started on its journey from Hudson, South Dakota, to Texarkana, Texas, it was impressed with the character of an interstate shipment, with Texarkana as its final destination. When the lumber in this case started on its journey from Ruliff to a foreign country, it was impressed with the character of foreign commerce. Sabine was not its final destination, and was not so understood or intended by the seller or the purchaser.

If what was foreign commerce, as a matter of fact, has been changed to intrastate commerce, it was accomplished through the expediency of a local billing.

The Court of Civil Appeals of Texas held that the bill of lading being for the transportation of the lumber from Ruliff to Sabine, was conclusive proof that the shipment constituted intrastate commerce, and that all evidence that it was in fact foreign commerce, could not avail to show its true character.

As will be shown later by quotations from the rulings of the Interstate Commerce Commission, all railroads subject to the Interstate Commerce Act are required to file their tariffs of rates from points in the United States to ports of trans-shipment to foreign countries. These tariffs may show the through rate and the proportion from point of origin to the port of trans-shipment, or they may be

filed, simply showing the rates from point of origin to the port of trans-shipment. In this case the railroads filed their tariffs, showing the rates from Ruliff, and other points in the United States, to Sabine, a port of trans-shipment. Presumably they had no arrangements with the steamship companies for through rates or through billing. At least they did all that they were required to do under the Interstate Commerce Act, as interpreted by the Interstate Commerce Commission. If the ruling announced by the Court of Civil Appeals of Texas is allowed to prevail, then the export tariffs on file with the Interstate Commerce Commission, insofar as they show the rates from points in Texas to Texas ports, are rendered absolutely nugatory; because, under such a tariff all of the shipments are on a bill of lading providing for the movement of the lumber to the port of trans-shipment. Therefore, all foreign shipments of lumber from points in Texas to Sabine; under the tariffs on file with the Interstate Commerce Commission would presumably move on what would be commonly known as a local bill of lading; that is, a bill of lading providing for the movement of the lumber from the point of origin to the port of trans-shipment.

As showing that the holding of the Court of Civil Appeals, that what was in fact foreign commerce, had been, by mere bill of lading, changed into interstate commerce, is erroneous, the language of this Court, in *Southern Pacific Terminal Co. vs. Interstate Commerce Commission*, 219 U. S., 498, is peculiarly applicable. In concluding the opinion in that case, this Court says:

In support of this contention it is insisted that the evidence shows the following facts: The cake and meal purchased by Young are bought by him in Texas, Oklahoma, Louisiana, and Arkansas, but chiefly in Texas, and shipped to him on bills of lading and waybills, showing the point of origin in those states and the destination at Galveston. The purchases are made for export, there being no consumption of the products at Galveston. His sales to foreign countries are sometimes for immediate and sometimes for future delivery, irrespective of whether he has the product on hand at Galveston. At times he has it on hand. At times, therefore, orders must be filled from cake to be purchased in the interior or then in transit to him. When the cake reaches Galveston it is ground into meal and sacked by Young, and for the meal thus ground and such meal as has been brought to his customers he takes out ships' bills of lading made to his order.

This evidence establishes, appellants contend, that the transit of the cake and meal is absolutely ended at the leased premises at Galveston, and that it is a "final point of concentration and manufacture, the cotton seed cake being there manufactured into meal and sacked for export." But this does not distinguish between the meal and the cake, nor between the meal that is purchased at points outside of Texas and directly exported, from that so purchased and manufactured on the wharves of the

terminal company. Nor does it take account of the fact that the wharves were intended for shipping facilities, a means of transition from land carriage to water carriage. It is manifest, as we have said, that to make the wharves manufacturing or concentrating points for one shipper, and not for all, is to give that shipper a preference. And, being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission. In other words, the manufacture or concentration on the wharves of the terminal company are but incidents, under the circumstances presented by the record, in the trans-shipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the substance of things and make evasion of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe vs. Errol*, 116 U. S., 517, 29 L. Ed., 715, 6 Sup. Ct. Rep.,

475, where it is said that goods are in interstate, and necessarily as well in foreign commerce when they have "actually started in the court of transportation to another state or been delivered to a carrier for transportation." In *Gulf, C. & S. F. R. Co. vs. Texas*, 204 U. S., 403, 51 L. Ed., 540, 27 Sup. Ct. Rep., 360, the facts are difference, and the case is not opposite.

If the movement of cotton seed cake from a point in Texas to Galveston, another point in Texas, on a local bill of lading showing Galveston as the final destination, constitutes foreign commerce when it is shown that it was purchased for, and was exported to foreign countries, then how can we escape the conclusion that the movement of the lumber involved in this case constituted foreign commerce. It was purchased for shipment to a foreign country. The ships upon which it was to be carried from Sabine were chartered before the lumber left Ruliff. When the lumber was loaded on the cars at Ruliff, its transportation to a foreign country was commenced, and the carriage thereof to Sabine on local bills of lading and the handling of it there over the docks and on to the ships were but mere incidents in the through transportation.

As said by the Court of Civil Appeals, if the lumber had been shipped from Ruliff to a foreign port on a through bill of lading, the handling of it from Ruliff by rail to Sabine and then over the docks on to shipboard would have been exactly the same.

On the trial of the case it was shown by uncontradicted evidence that there was a large and continuous shipment of lumber from points in Texas to

Sabine and thence to foreign countries and points beyond Texas. That this had been going on for years. That all of the lumber moving to Sabine was either shipped to a foreign country or to another state. None of it was stopped or consumed at Sabine. There was no demand there for lumber, especially for export lumber such as that involved in this suit. The proof showed that export lumber was of large, square dimensions and usually of more than ordinary lengths. That none of the lumber reaching Sabine was stopped there longer than necessary to provide a ship and place it on board for transportation beyond the state.

In *Swift vs. United States*, 196 U. S., 390, the Supreme Court, in discussing the government's bill, says: It is said that this charge is too vague and that it does not set forth a case of commerce among the states. Taking up the latter objection first, commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business. When cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so with only the interruption necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce. What we say is true, at least, of such a purchase by residents in another

state from that of the seller and of the customer. And we need not trouble ourselves at this time as to whether the statute could be compelled by any arrangement as to the place where the sale in point of law is consummated.

The above language of this court is particularly applicable to the facts in this case. Here, the seller, the Dallas Mercantile, and the buyer, were in Texas; the purchaser was a non-resident. The lumber was sent from Dallas, a place in Texas, with the expectation that it would end its transit in a foreign country, with only the interruption necessary to transfer it from the car to a ship, which had been previously provided. The lumber was in fact carried to a port of trans-shipment and was in fact shipped to a foreign country; and the evidence shows that this was a typical, constantly recurring course; and, we submit, constituted a current of foreign commerce.

In *Hammer & Company vs. United States*, 30 U. S. 36, this court says:

What necessarily would be there for supposing that Congress intended to exercise its control over such commerce if it happens to be killed through to the foreign port? Such construction would place such important commerce shipped in the United States to a port for trans-shipment almost wholly outside the restrictions of the law, and would require to withdraw such commerce from the regulations enforced against other interstate commerce by the enactment of a through bill of lading. That

is the present case. The through rate is obtained by adding the ocean rate to the inland rate. There is no contractual relation between the railroad carrier and the ocean carrier. The ocean rate is uncertain and variable, depending upon time of sailing and available space. The accommodation for ocean shipment was obtained by the shipper and by it made known to the inland carrier. We think the language of the statute, read in the light of the manifest purpose of its passage, shows the intent of Congress to bring interstate commerce within the control of the provisions of the law up to the time of ocean shipment. This construction is reinforced by the broad provision of the act as to publishing schedules, showing rates, fares, and charges, and filing the same with the Interstate Commerce Commission. That such rates, notwithstanding through bills of lading, were subject to the provisions of the act, was held, upon full consideration, and rightful, as we think, by the Interstate Commerce Commission. *Re Tariffs on Export and Import Traffic*, 10 Inters. Com. Rep., 55.

In *Re Tariffs on Export and Import Traffic*, 10 I. C. C. Rep., 55, the Interstate Commerce Commission after quoting from Section 1 of the Interstate Commerce Act, says:

Now it is urged that Congress, had the intention been to include all foreign commerce, would have so stated in comprehensive

terms; that no distinction would have been made between adjacent foreign countries and those not adjacent, nor would the words, "carried from such place to a port of trans-shipment" have been used; that the addition of these words, therefore, plainly shows that the act was only to apply to traffic carried upon an inland bill of lading to the port of trans-shipment; that when the transportation is upon through bill from a point in the United States to a point in a foreign country, it is not within the terms of the first section, and, therefore, not subject to the sixth section, or any of the remaining provisions of the act.

It has already been seen that export and import traffic is in fact sometimes handled upon an inland bill of lading to or from the port of export or import, and sometimes upon through bill of lading between the point in the United States and that in the foreign country. There is no particular reason why substantially all traffic might not be conducted at the option of the carriers upon through bills. In other words, the carriers might at their election, by the manner in which the business is transacted, remove all foreign commerce from the operation of the Act to Regulate Commerce. One rate may be made one shipper and a different rate some other shipper. Rebate may be granted and discriminations practiced without hindrance. When the volume of our foreign traffic is considered, together with the extent to which that traffic is handled by rail,

this proposition becomes somewhat startling, and the conclusion ought not to be accepted unless reasonably clear.

The Interstate Commerce Commission reached the conclusion in that case that all foreign commerce, whether moving to the port of trans-shipment on a local bill of lading or from point of origin to a point in a foreign country, was embraced in the Act of Congress regulating interstate and foreign commerce.

In *Cosmopolitan Shipping Co. vs. Hamburg-American Packing Company*, 13 I. C. C. Rep., 266, Commissioner Lane, delivering the opinion, after quoting the concluding part of section one of the Interstate Commerce Act, says:

By this language Congress sought to certainly exclude purely state traffic and to as certainly include foreign traffic, even when its movement was wholly within the State. Therefore, the rates on cotton moving for export from Dallas, Texas, to Galveston, although the movement is wholly within the State, are subject to Federal regulation.

The Court of Civil Appeals of Texas found that the lumber involved in this case was moved from Ruliff, Texas, to Sabine, Texas, for export to a foreign country.

In *Baer Bros. Mercantile Company vs. Railway*, 13 I. C. C. Reports, 33, speaking of the power of Congress to regulate foreign commerce, the following language is used:

“The constitutional warrant for the act to regulate commerce is found in that provision which gives to Congress control over commerce with foreign nations and between the several states. It was evidently the purpose of Congress in the enactment of this statute to assume control of transportation, which is a part of commerce, in so far as it could lawfully do so, when that transportation was by railroad. The transportation over which Congress had control was of two kinds: (1) that between the states and territories, (2) that between the United States and foreign countries. The Federal Government had and could have no authority over transportation which began and ended in a particular state.

It would have control of transportation from the United States to a foreign country even when the movement in the United States was entirely within a single state. If, for example, traffic was taken up at Buffalo by the New York Central and thence carried to New York City as a final destination, this service would be entirely within the State of New York and not subject to Federal control; but if that carriage was of property in transit from Buffalo to a foreign country, then it would fall within the purview of national supervision.

The purpose of the provision was to make plain the exact extent of the jurisdiction of the Commission. When the transportation is wholly within a state that jurisdiction attaches, provided the carriage is part of a

through movement to some foreign country. If the movement is from one state to another state, the jurisdiction also attaches. The only instance in which the Commission has no jurisdiction is where the movement is entirely within the limits of a state, and is not part of a movement to or from a foreign country.

The case of Southern Pacific Terminal Company vs. Interstate Commerce Commission and E. H. Young, 219 U. S., 498, is so manifestly apposite, that it would seem to be a waste of time to cite or quote from other authorities. However, it may not be amiss to later briefly review the leading authority on the subject by the Supreme Court of Texas, prior to the decision of the United States Supreme Court in G. C. & S. F. Ry. Co. vs. Texas, 204 U. S., 403, some expressions in which caused the Court of Civil Appeals of Texas to hold that the bill of lading conclusively fixed the character of the commerce, regardless of the real facts, which show a foreign shipment beginning at Ruliff and ending in a foreign country. That the Court of Civil Appeals did not correctly interpret the last named decision, is made quite apparent by the opinion of this Court in Southern Terminal Company vs. I. C. C. and Young.

In Railroad Commission of Ohio vs. Worthington, 225 U. S., 101, it was sought to enjoin the Railroad Commission of Ohio from enforcing an order establishing a rate of 70c a ton on lake-cargo coal transported from Eastern Ohio to the ports of Huron and Cleveland, Ohio, for carriage thence by lake vessels. A permanent injunction was granted in the Circuit Court against the enforcement of the rate on the

ground that it was a regulation of interstate commerce. The judgment of the Circuit Court was affirmed by the Circuit Court of Appeals, 187 Fed., 965, and an appeal was taken to the Supreme Court. This Court held that the movement of the coal from Eastern Ohio to Huron and Cleveland, Ohio, though made upon local bills of lading, the said ports of trans-shipment not being intended as the final destination, constituted interstate commerce, and not subject to the rate prescribed by the Railroad Commission of Ohio.

Mr. Justice Day, delivering the opinion, says:

Much stress is laid in argument for the Commission upon the fact that the coal is billed only to Huron, and it is said that in that aspect of the case, it is controlled by *G. C. & S. F. Ry. Co. vs. Texas*, 204 U. S., 403. There it was sought to hold a railroad company upon a shipment of corn from Texarkana to Goldthwaite, Texas, for a violation of the regulations of the State Railroad Commission applicable to intrastate carriers. The company contended that the shipment was in fact an interstate carriage from Hudson, South Dakota, to Goldthwaite, Texas. The facts showed that the corn was carried upon a bill of lading from Hudson to Texarkana, and that afterwards, some five days later, it was shipped from Texarkana to Goldthwaite, both points in the State of Texas. This was held to be an intrastate shipment unaffected by the fact that the shipper intended to reship the corn from Texarkana to Goldthwaite, for, as this Court

held, the corn had been carried to Texarkana upon a contract for interstate shipment, and the reshipment five days later upon a new contract was an independent intrastate shipment. It is evident from this statement of facts that the case is quite different from the one under consideration. There a new and independent contract for intrastate shipment was made, the interstate transportation having been completely performed; here a rate is fixed on that part of an interstate carriage which includes the actual placing of the coal into vessels ready to be carried beyond the State destination.

That the test of through billing is not necessarily determinative is shown in the late case of *Southern P. Terminal Co. vs. Interstate Commerce Commission*, 219 U. S., 498. In that case Young bought cotton seed cakes at various points in Texas and shipped them to himself at the port of Galveston, where they were prepared for export. This Court held that such transportation was within the jurisdiction of the Interstate Commerce Commission, and that the special privileges given by the Southern Pacific Terminal Company to Young on the wharf at Galveston were undue preferences in his favor. As to the fact that the shipments were not made on through bills of lading, but were to Galveston from other places in Texas, this Court said:

“It makes no difference, therefore, that the shipments of the products were not made

on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and by their delivery to the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe vs. Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce, when they have actually started in the court of transportation to another State, or delivered to a carrier for transportation."

It is contended that this transportation of the coal under the rate fixed by the Railroad Commission is not within the power and authority of the Interstate Commerce Commission under Section 1 of the Act to Regulate Commerce, which makes the provisions of the Act inapplicable to the transportation of property wholly within one State, and not shipped to or from a foreign country, from or to a State or territory; and, furthermore, that a transportation of the character here in question is only within the jurisdiction of the Interstate Commerce Commission when it is a transportation partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or

shipment; and, therefore, that the subject-matter in question is left within the State jurisdiction. On the other hand, it is contended that this transportation is within the jurisdiction of the Commission under the Act to Regulate Commerce. It is enough to now hold, as we do, that the establishing of the rate in question is an attempt to regulate interstate commerce, and is therefore beyond the power of the State or a Commission assuming to act under its authority.

The facts in the case of *Texas & Pacific Ry. Co. et al vs. Railroad Commission of Louisiana*, 183 Fed., 1005, are very much like the facts in this case. The opinion of the Circuit Court, in that case, which was affirmed by the Circuit Court of Appeals in the 184 Fed., 989, is correctly indicated in the syllabus as follows:

Complainant railroad companies filed with the Interstate Commerce Commission, a schedule of rates from points in Louisiana to New Orleans for export shipments. The Railroad Commission of Louisiana had also fixed a schedule of different and lower rates on local shipments between the same points. It also, by an order, allowed four days' free storage on local shipments and twenty days on shipments intended for export, in which order the railroads acquiesced, and also delivered shipments for export at ship's side free of charge for switching. Certain shipments were delivered to complainants from points in Louisiana for carriage to New Or-

leans on bills of lading of substantially the local form, and on their arrival, the consignees demanded and received the free storage accorded export shipments and free delivery to the vessel carrier; the shipments being delivered by complainants directly from their cars to such carrier, as was intended by the owner when it was shipped. Held that, notwithstanding the use of local bills of lading, the contract between the shippers and complainants was one for an export shipment, over which the Louisiana Railroad Commission had no jurisdiction, and that the complainants were entitled, and even required, to charge the rates on such shipments fixed by their schedules filed with the Interstate Commerce Commission.

In *Houston Navigation Company vs. Insurance Company*, 89 Texas, 1, decided in November, 1895, the question of whether cotton transported on a local bill of lading from Houston to Galveston, points within the State of Texas, upon vessels plying between these two points, was intrastate and interstate commerce, was involved.

It appeared in that case that the cotton had been destroyed by fire while in the possession of the Navigation Company. It had been sold to John Sherwood & Company, who resided in Liverpool, and C. Menelas, who was a foreign buyer. The cotton was moved on the barge *Katinka*, which operated between Houston and Galveston. The bill of lading recited that the cotton was received by the Navigation Company for delivery at Galveston to order, notify John O. Hayworth. The bill of lading contained a stipula-

tion that the Navigation Company should not be liable for loss by fire, and that the contract should be completely executed and the liability of the Navigation Company terminated on delivery of the cotton to the Mallory Line at Galveston.

Judge Brown, in delivering the opinion of the Court, says that there are practically two questions presented for decision, and states them as follows:

1st. "Was the Direct Navigation Company engaged in interstate commerce while transporting the cotton in question from Houston to Galveston? If so; then,

2nd. "Did the provision in its charter that it should 'be subject in the transportation of freight to the laws applicable to common carriers,' operate to make it liable under the laws of the State for the loss sustained, notwithstanding the limitation contained in the bill of lading and the exemption provided by the statutes of the United States?"

In discussing and arriving at a conclusion as to the first of the above questions, the Court says:

"No distinct and certain definition of interstate commerce has yet been fixed by the decisions of the Courts, and perhaps none can be given which will apply to all cases. But the law as applicable to this case, deducible from the decisions of the Courts, may be stated thus: When a commodity has been delivered to a common carrier, to be transported on a continuous voyage or trip to a point beyond the limits of the State where delivered, the character of interstate or foreign commerce attaches thereto."

Then, after quoting from *Coe vs. Erroll*, 116 U. S., 517, the Court says:

"The questions to be determined are: Did the cotton in question, when delivered to the Navigation Company, start on its journey to a point outside of the State of Texas? Was its destination at that time fixed and determined upon, and was the carriage from Houston to Galveston a part of the voyage which was to be continuous? The facts of this case show that the owners of the cotton lived in Liverpool, and the cotton itself was, by their agents, put in transportation by delivery to the Navigation company, to be carried by it to the city of Galveston, and there delivered to the Mallory Line, by which it was to be transported to New York, and thence by connecting line of steamers to the city of Liverpool. The bill of lading upon its face showed that the Navigation Company was to deliver the cotton to the Mallory Line at Galveston, at which time the liability of the Navigation Company should cease and that of the Mallory Line should attach. There can be no doubt that the destination of the cotton at the time of its delivery was beyond the limits of this State. It is equally clear from the bill of lading and other testimony that a continuous voyage was contemplated, and the trip between Houston and Galveston was simply a part of that voyage. Upon this state of facts the cotton would undoubtedly come within the rule laid down in the case cited above, and would be classed as interstate commerce.

"But the evidence likewise shows that the Houston Direct Navigation Company gave a bill of lading to Galveston only, and not a through bill to cover the entire route, and the charges for freight to Gal-

veston, and wharfage at that place were paid at the time that the cotton was delivered. Do these facts change the rule of law applicable to the case and constitute this a local shipment, as distinguished from interstate or foreign commerce?

"It has been generally held that where a carrier in one State receives a commodity for shipment by a continuous trip over its own line and connecting lines, giving a through bill of lading to the point of destination, with the provision that its own liability shall cease upon delivery to its connecting line, at a point within the State where it was received, such transportation is to be considered as interstate commerce, and the carrier is but one of several agencies employed. *Railway vs. Sherwood*, 84 Texas, 135. The fact that the bill of lading given by the Direct Navigation Company was only to Galveston establishes simply that the liability of the company terminated at that point, and has the same effect, and no more, as if a through bill had been given by the receiving carrier, with the stipulation that its liability should terminate when delivered to the connecting carrier. The effect of such bill of lading as last named would be to make it, although a through bill upon its face, in effect a separate bill, so far as the liability is concerned of each carrier engaged in the transportation.

"We do not understand that it is necessary that all of the carriers engaged in an interstate or foreign shipment shall be parties to the contract of shipment for the entire route. In fact, as we understand the decisions, the character of the commerce is not affected by the terms of the contract of the carrier as it relates to liability for the freight, but only in so far as it shows that it is or is not a part of the continuous carriage from the beginning point to the

point of destination. (See *Daniel Ball*, cited above; *Harmon v. Chicago, St. Louis and Pac. Ry. Corp. Case*, 62; *Peter v. Newport*, 22 Ill., 341.) The last two cases cited involved the question as to whether or not tugboats, engaged in towing vessels which were themselves engaged in interstate commerce, were to be considered as likewise engaged in such commerce. In each case it was held that such tugboats, although operating locally and within the limits of a State, were to be considered as engaged in interstate commerce, and not subject to the laws of the State. The tugboats were in no sense parties to the contracts for transportation, but were simply agencies employed therein.

In *Harmon v. Railway*, 62 Iowa, 332, the Supreme Court of that State, upon a bill of lading similar to the one given in this case, held that the transaction constituted a local shipment, and that the rights of the parties were to be determined by the laws of that State. In *Railway v. Sherwood*, 81 Texas, on page 155, the judge who delivered the opinion approved the case of *Harmon v. Railway Company*, but the question decided in the case approved and now before this Court was not endorsed in the case then being decided, and the expressions of approval of the Iowa case are simply obiter dicta and not to be taken as authority. The Court of Civil Appeals and the council for Deliberation in Texas refer to the case of *The Grand Railway Company v. Case*, 5 Texas Civ. App., 424, in which this Court refused an application for a writ of error. In that case the Court of Civil Appeals said: "The evidence does not show that the shipment of the money was interstate, but if it did the limitation of liability by the Steamship Company in the bill of lading applies only to carriage by

ship." The two propositions were involved in the decisions of that case, and this Court refused the application for writ of error upon the ground that the limitation of liability by the Steamship Company in the bill of lading given by it did not apply to the carriage by the Railway Company. The refusal of a writ of error does not imply the approval of the decision of the Court of Civil Appeals upon all questions discussed by it, but simply of the results of the judgment of that Court.

"We conclude from the authorities and the facts in this case that the transportation of the cotton by the Direct Navigation Company from Houston to Galveston was interstate or foreign commerce, and that its liability for the loss must be determined by the rules of law established by Congress, in so far as such rules have been prescribed, unless the provision of the charter, before quoted, operates to subject the corporation in the carriage of interstate commerce to the statutes of the State instead of the laws of Congress."

The following Texas cases follow the rule announced in *Navigation Company vs. Insurance Company*:

State vs. G. C. & S. F. Ry. Co., 44 S. W. Rep., 442.

State vs. So. Kansas Ry., 49 S. W. Rep., 252.

State vs. I. & G. N. R. R., 81 S. W. Rep., 394.

G. C. & S. F. Ry. Co. vs. Fort Grain Co., 72 S. W. Rep., 329.

Railway vs. Barry, 45 S. W. Rep., 814.

We think it can hardly be doubted that but for the decision of this Court, in the *Santa Fe Grain Rate Case*, 301 U. S., 403, the Court of Civil Appeals of Texas would have followed the unbroken line of authority in that State and the prior decisions of this

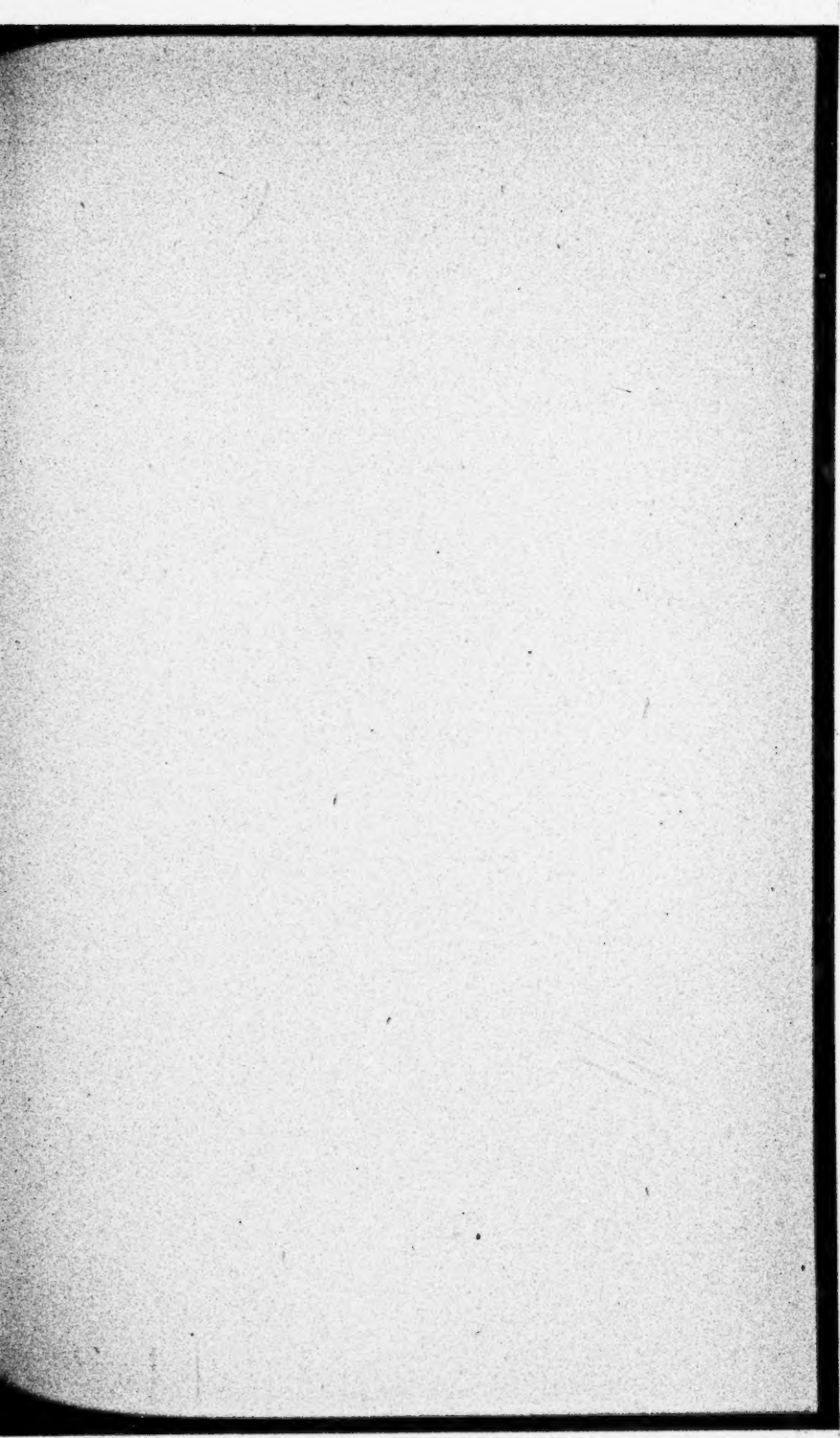
Court, and in so doing, would have arrived at a different conclusion. We also believe we are warranted in saying that if that Court had had the benefit of the opinion of this Court in Southern Pacific Terminal Company vs. I. C. C. and Young, and R. R. Commission vs. Worthington, a different conclusion would have been reached.

Because of the error of the Court of Civil Appeals of Texas in holding that the movement of the lumber in this cause did not constitute foreign commerce, we ask that the judgment of the said Court be reversed.

Respectfully submitted,

S. W. MOORE,
H. M. GARWOOD,
HIRAM GLASS,

Of Counsel for Plaintiffs in Error.



Office Supreme Court, U. S.
FILED.

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JAMES H. MCKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1912.

TEXAS & NEW ORLEANS RAILROAD
COMPANY, TEXARKANA & FORT
SMITH RAILWAY COMPANY and
UNITED STATES FIDELITY &
GUARANTY COMPANY,

Plaintiffs in Error,

vs.

SABINE TRAM COMPANY.

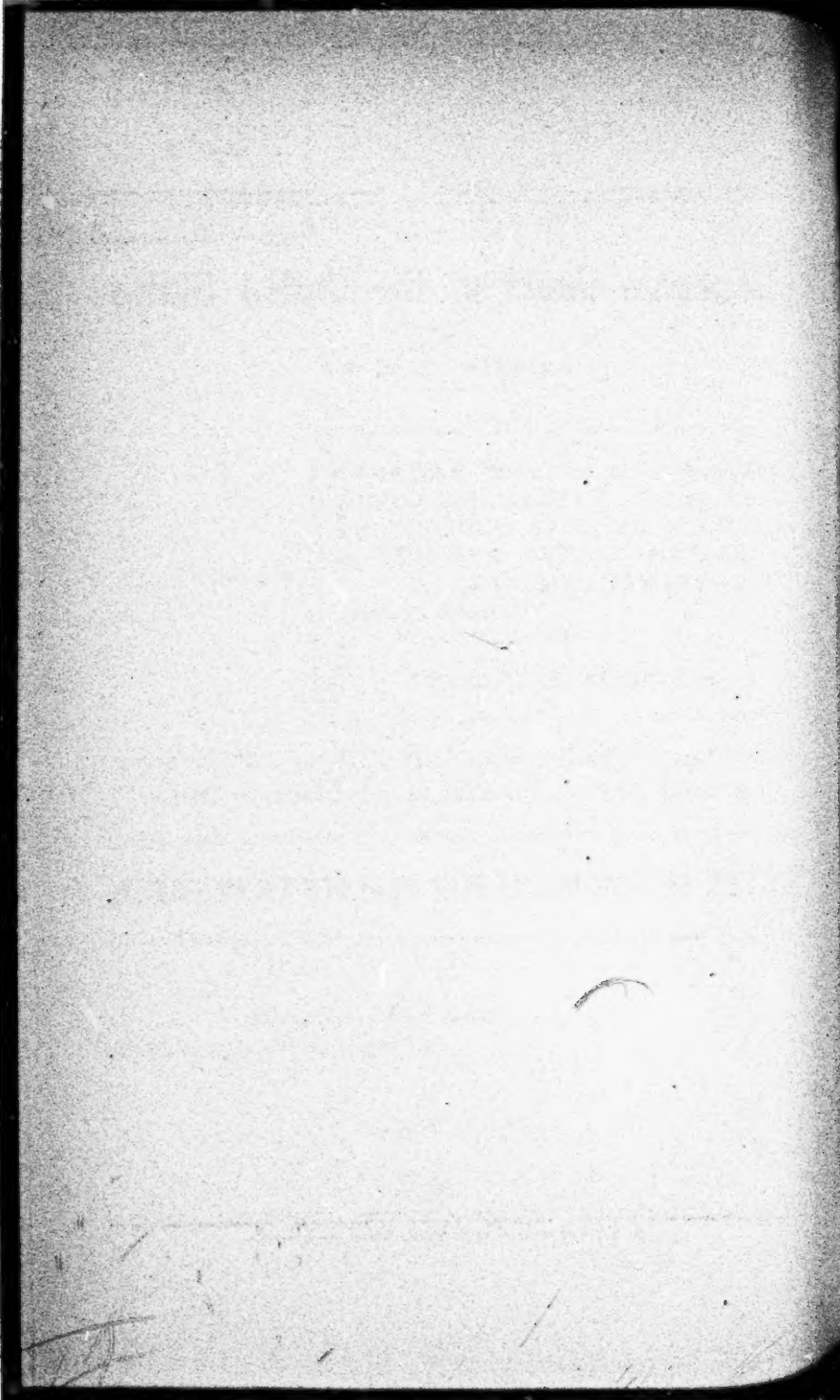
No. 98.

IN ERROR TO THE COURT OF CIVIL APPEALS FOR THE FIRST
SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

NOTES OF ARGUMENT FOR PLAINTIFFS IN ERROR.

MAXWELL EVARTS,

Of Counsel for Plaintiffs in Error.



In the Supreme Court of the United States.

OCTOBER TERM, 1912.

**TEXAS & NEW ORLEANS RAIL-
ROAD COMPANY, TEXARKANA
& FORT SMITH RAILWAY
COMPANY and UNITED
STATES FIDELITY & GUAR-
ANTY COMPANY,**

Plaintiffs in Error,

VS.

SABINE TRAM COMPANY.

No. 93.

**IN ERROR TO THE COURT OF CIVIL APPEALS
FOR THE FIRST SUPREME JUDICIAL DIS-
TRICT OF THE STATE OF TEXAS.**

**NOTES OF ARGUMENT
FOR PLAINTIFFS IN ERROR.**

Statement.

In 1906 the Sabine Tram Company was en-
gaged in the lumber business and had a saw
mill at Ruliff, Texas, on the Texarkana and

Fort Smith Railway Company (Record, p. 136). W. A. Powell Company, Limited, was in the export lumber business (Record, pp. 50, 51, 158, 161), and all lumber bought by this company was shipped to Europe either through the port of Sabine or of Port Arthur, Texas. For some time past the Powell Company had bought lumber from the mill of the Sabine Tram Company at Ruliff, for export at the port of Sabine (Record, p. 150).

In the summer of 1906 the Powell Company sold to its customers in Europe for future delivery large amounts of heavy pine lumber of a kind only used in European trade (Record, p. 162) and chartered steamers for its ocean carriage (Record, p. 159). In order to fill these European contracts (Record, p. 172), the Powell Company on August 28, 1906, bought of the Sabine Tram Company 500,000 feet of heavy pine lumber to be delivered at the seller's option either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas (Record, p. 135). The Sabine Tram Company elected to deliver the lumber at the port of Sabine, which was on the Texas and New Orleans Railroad and during September and October, 1906, delivered the lumber at Ruliff to

the Texarkana and Fort Smith Railway, which carried it to Beaumont, the terminus of the road, where it was taken by the Texas and New Orleans Railroad and transported to Sabine for delivery to the Sabine Tram Company "Notify W. A. Powell Company, Limited" (Record, p. 136). The course of business was for the Powell Company to pay the full purchase price of the lumber including the freight and then the Sabine Tram Company repaid the Powell Company the amount of the freight (Record, p. 137).

Sabine is a very small town, the population of which does not exceed fifty in number and furnishes no market whatever for lumber (Record, p. 187). The railroad station where local freight is unloaded is half a mile from the docks and slips (Record, p. 168). The lumber in question moved direct from the mill at Ruliff to the docks at Sabine, where it was unloaded into the water of the slips within reach of ship's tackle (Record, p. 177). It came through the local station at Sabine without being unloaded. There were in all thirty-three carloads of lumber moving on thirty bills of lading. The difference between the number of the cars and the number of the bills of lading was caused by the length of some of the lumber which required two cars

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to carry it (Record, p. 148). All way-bills of this lumber were stamped "Interstate" and on each was written the words "for export to Europe" (Record, pp. 377 *et seq.*). This information was of course furnished to the railroad making out the way-bill by the shipper, the Sabine Tram Company. Before the lumber reached Sabine it was covered by insurance until arrival in Europe (Record, p. 176).

Prior to August, 1906, the export rate filed with the Interstate Commerce Commission on lumber from the Ruliff mill to the ships at Sabine had been four (4) cents (Record, pp. 170, 171, 186). Before the shipments of lumber in question were made, the Powell Company had purchased a large amount of export lumber from the Sabine Tram Company (Record, pp. 163, 164, 169), and it had come forward from the Ruliff mill on the export rate of four (4) cents. On domestic freight there was allowed at Sabine 48 hours of free time for unloading. On export freight seven days of free time was given. (Record, pp. 168, 187). The latter amount of free time was taken by the Sabine Tram Company, when necessary (Record, p. 171). All previous lumber shipments from the Ruliff mill to Sabine were regarded, both by the Sabine

Tram Company and by the Powell Company, as export shipments, moving forward under the four (4) cent rate, and entitled to additional free time and other privileges, to which domestic shipments of lumber were not entitled.

While the export rate was four (4) cents, the Sabine Tram Company took without hesitation the position that the lumber was export lumber, moving under that rate. When, however, the export rate was raised from four (4) cents and a switching charge of \$2.50 from the Sabine local station to the docks, to fifteen (15) cents (Record, p. 186), with the switching charge absorbed, then the Sabine Tram Company changed its position and claimed that the lumber in question was a local shipment from the Ruliff mill to the port of Sabine and entitled to the rate of six and one-half (6½) cents and a switching charge of \$1.50 (Record, p. 171).

Upon arrival of the lumber at the Sabine docks it was immediately placed on board the steamer chartered to take it to Europe. If it happened that, on reaching Sabine, no ship was then in port, the lumber remained in the water of the slips only until the next steamer came in (Record, p. 177).

Notwithstanding the fact that the Sabine Tram

Company had, prior to the shipment in question, considered as export shipments all lumber moving from the Ruliff mill to Sabine; and in spite of the fact that the purchaser dealt only in lumber for export and that the lumber bought was of a kind only used in foreign markets; and of the further fact that the lumber was known not to be for local use at Sabine, a town of fifty inhabitants or less (Record, p. 187), and that it must necessarily move out for European ports, the Sabine Tram Company brought an action against the Texas and New Orleans Railroad Company and the Texarkana and Fort Smith Railway Company, in the State court of Texas, to recover the difference between the rate on the lumber of 6¾ cents per hundred under the tariff filed with the State Railroad Commission, and the rate of 15 cents per hundred filed with the Interstate Commerce Commission upon all the shipments of lumber involved (Record, p. 56). The railroad companies defended the action upon the ground that the lumber in question was foreign commerce, it being well known to all concerned, at the time the shipments originated, that their final destination was Europe (Record, pp. 151, 154) and that it was not open to them to move the lumber, except under the tariff filed with the

Interstate Commerce Commission (Record, p. 73 *et seq.*).

The trial court charged the jury that the shipments of lumber were not foreign commerce but intrastate commerce and subject to the tariff of 6¼ cents, filed with the Railroad Commission of Texas (Record, p. 105). The jury found accordingly and, upon appeal, the judgment was affirmed. The case comes here by writ of error to the Court of Civil Appeals of Texas.

Specification of Errors.

The court below erred in not holding that the character of the lumber shipments (whether foreign or intrastate commerce) was not determined by whether the lumber moved on a local bill of lading, but upon what was its ultimate destination as known to all parties concerned at the time of shipment and that as the Sabine Tram Company, the Powell Company and the railroads themselves all knew that the lumber moved from the mill at Ruliff for European ports via Sabine it could go forward only under the rates from Ruliff to Sabine for export business filed with the Interstate Commerce Commission.

[REDACTED]

[illegible][illegible]

conclusion to the facts in the present case for the reason that at the inception of the transportation of the lumber from Dallas, Texas, it was known to all parties concerned that its destination was some European port (Record, p. 163). That the Sabine Trail Company knew this is conclusively established by the information furnished by it to the Railroad Company which enabled the latter to write upon the way-bill the words "For export to Europe." (Record, pp. 377 et seq.).

That the *Terminal* case has no application to a case presenting the facts found here is the view taken by this Court, which said in the case of *Southern Pacific Terminal Co. vs. Interstate Commerce Commission* (159 U.S., 498, 517), a case on all fours with the case at bar, that—

"In *C. C. & S. F. Ry. Co. v. State of Texas*, 104 U.S., 473, the facts are different and the case is not applicable."

The present case is controlled by the *Southern Pacific Terminal Company* case (supra). It is impossible to point out any material distinction between the two cases. In the *Terminal Company* case a man named Young purchased cotton and sold it in Texas for export. It was billed to him at Galveston on local bills of lading. After its re-

ceipt at Galveston the cake was ground into meal. Not only was the commodity in question shipped on local bills of lading as in the case at bar, but the whole character of the product was changed at Galveston by manufacture. It might or might not have gone forward to Europe, depending upon whether a purchaser could be found in this country at as good or better prices than could be obtained in Europe. In other words the cake at the time of the shipment at point of origin had not been sold to any particular consumer in Europe, as was the lumber in question which had been bought to fill European contracts theretofore made. In the case at bar the lumber was of a kind only used in foreign countries (Record, p. 162). Similar lumber had been previously bought to a large extent by the Powell Company from the Sabine Tram Company for export to Europe (Record, p. 169). The lumber previously purchased had been shipped from the Ruliff mill upon the export rate filed with the Interstate Commerce Commission. As to the particular lumber in question the Sabine Tram Company had advised the railroad company that it was for export, and the railroad company, in pursuance of the advice received from the Sabine

Tram Company, had written upon the way bills the words "for export to Europe" (Record, pp. 377 *et seq.*). Sabine was a town of not more than 50 inhabitants. There was no local demand there for lumber (Record, p. 187). It was a port from which lumber shipments were constantly made to Europe. The evidence is clear, convincing and certain that the Sabine Tram Company and all concerned in the lumber in question understood that it was for export. (See Letter of Tram Company dated Aug. 31, 1906. Record, p. 138).

As a matter of fact the situation in the present case is far stronger than it was in the *Southern Pacific Terminal Company case*, yet in that case, this Court definitely took the position that the cotton seed cake involved which was shipped from the point of origin on local bills of lading to Galveston was foreign commerce over which the Interstate Commerce Commission had jurisdiction. If it was found to be foreign commerce in that case, although the character of the shipment was changed at Galveston by manufacture, then it must be deemed to be foreign commerce in this case where the shipments came directly through from the mills at Ruliff and were unloaded from the cars into the water within reach

of ship's tackle (Record, p. 177). It must also be borne in mind that the lumber was bought from the Sabine Tram Company to fill contracts already entered into in Europe (Record, p. 172), and that part of the ships which were to carry the lumber had been chartered before the contract of purchase was made with the Sabine Tram Company (Record, p. 159).

The claim was made in the argument of the *Terminal Company case* that the Interstate Commerce Commission by the order which was sought to be enjoined had undertaken to control intra-state commerce not subject to the Act to Regulate Commerce, but this Court held that, looking at all the facts in the case, the shipment of the oil cake on local bills of lading from the initial point in Texas to Galveston was not intra-state commerce, but was foreign commerce over which the Interstate Commerce Commission had jurisdiction. At page 527 the Court said :

" It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to

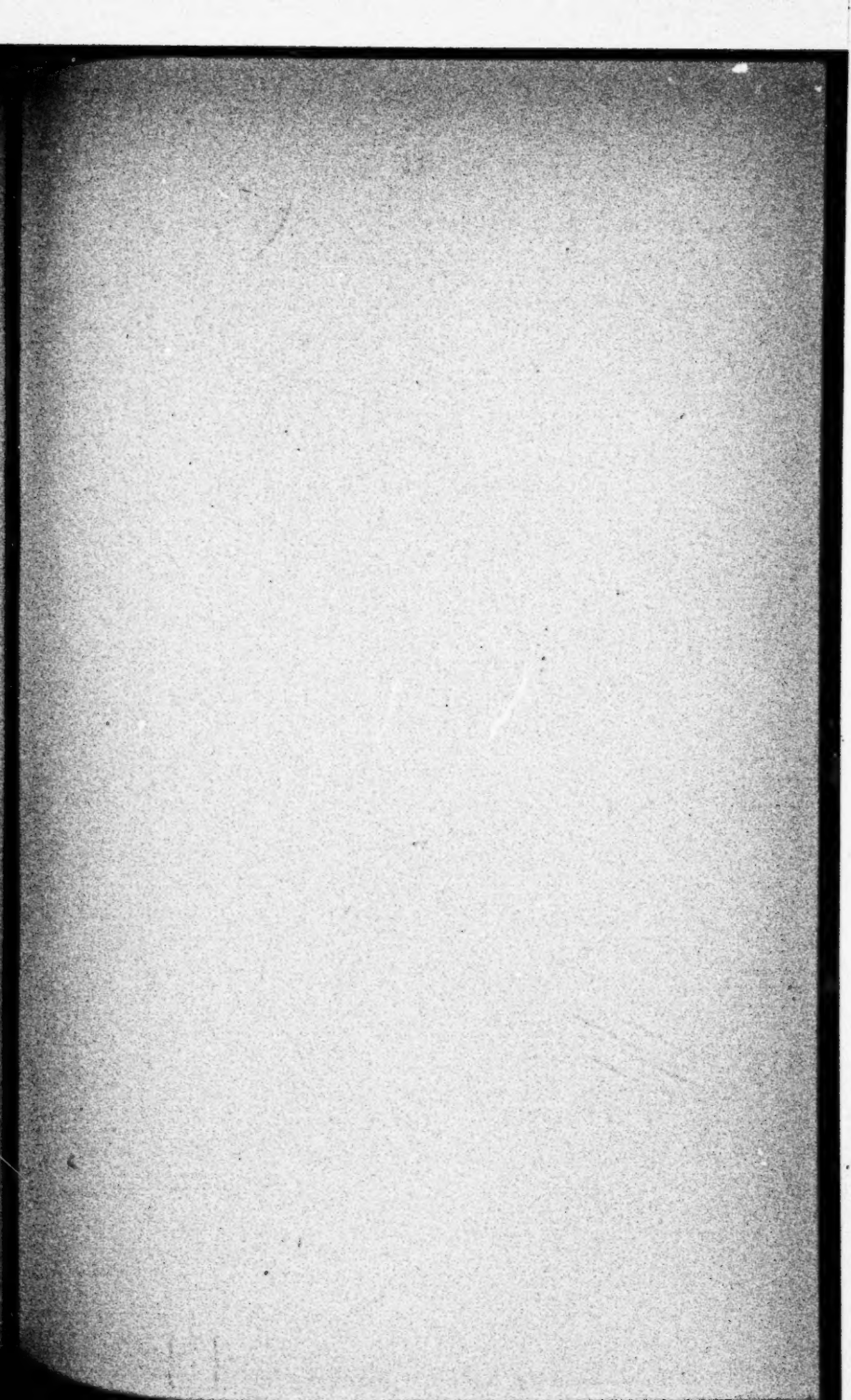
the Galveston, Harrisburg & San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the Terminal Company being a part of the railway for such purpose. The case, therefore, comes under *Coe v. Errol*, 116 U. S., 517, where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another State, or delivered to a carrier for transportation.' "

It is important to notice that the entire decision is based upon the proposition that at the time the oil cake was shipped at the point of origin in Texas it was destined for export and intended to be delivered in a foreign country. This is the test that was applied in the *Terminal Company case*. Applying this test to the case at bar there would seem to be no escape from the proposition that the railroads were compelled to move the lumber under the export rate filed with the Interstate Commerce Commission.

In the subsequent case of *Ohio Railroad Commission vs. Worthington* (225 U. S., 101, 110), the decision in the *Terminal Company case* was referred to with approval.

It is therefore respectfully submitted that the case at bar is controlled by the case of *Southern Pacific Terminal Company vs. Interstate Commerce Commission*, 219 U. S., 498, and that the judgment below should be reversed.

MAXWELL EVARTS,
Of Counsel for Plaintiffs in Error.



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No. 93

IN THE
SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1912

**TEXAS & NEW ORLEANS RAILROAD CO.,
TEXARKANA & FORT SMITH RAILWAY CO.
AND UNITED STATES FIDELITY &
GUARANTY COMPANY**

PLAINTIFFS IN ERROR

vs.

SABINE TRAM COMPANY

DEFENDANT IN ERROR

***In Error to the Court of Civil Appeals for the First
Supreme Judicial District of the
State of Texas***

BRIEF FOR THE DEFENDANT IN ERROR

This case really involves but one important question—whether the transportation of certain lumber from Bulliff, a point in Texas, to Sabine, a point in Texas, over a route entirely in Texas, was, under the circumstances of the case, an intra-state or a part of a foreign shipment.

Our main proposition, and the material facts going into the same, may be thus stated:

The Saline Team Company, a lumber manufacturer, having on August 27th, 1905, contracted in writing (R. 1905) with W. A. Powell Company, Ltd., to sell and deliver to the latter during September-October, 1905, "the same of Sangre - - - - f. o. b. near Saline," (both points in Texas), 300 M feet of lumber, with an offer pursuant thereto to comply with this contract, at various dates between September 7 and November 2, 1905, inclusive, signed and delivered the same at Saline to the purchaser; and to accomplish this, it, The Saline Team Company, shipped, and the Texasian and Fort Smith Railway Company, carrier, as sole parties, as it appears there, without any written contracts, and enclosed by a bill of lading, (there being no other contract, agreement, understanding, or direction, written or verbal, between them), under which the Railway Company acknowledged the receipt from Saline Team Company, at Saline, a point in Texas, of the several cars of lumber in question, for transportation to the "Saline Team Company, with W. A. Powell Company, Ltd.," the same being transported by the two defendant railway companies, according to their service, from Saline to Saline, another point in Texas, (being a port), over portions of their line located entirely in Texas, being delivered to the purchaser at Saline, where Powell Company held it from one to sixty days, and being released at the request of Powell Company, at the T. and F. C. wharf at Saline, located about a quarter mile from the depot.

Therefore, the service and shipment being substantial, the rules and regulations fixed by the Texas Railroad Commission applied, and the railway companies became liable for the penalties and consequences attached by the laws of Texas to the violation of such rules and regulations.

—3—

We submit that the character of the shipments as determined by the facts stated was not changed or affected by either of the following circumstances:

First, Because the purchaser, the Powell Company, an exporter of lumber, bought the lumber in question from the Sabine Trunk Company, with the view of ultimately reshipping it out of the port of Sabine, (where it was to be delivered to Powell Company, f. o. b. cars), to some one of several foreign places; the particular points to which any of the pieces would go not being known even to the Powell Company until an invoice of the same, describing it, reached its agent *after* shipment, and the destination of some of it being known at any time prior to the taking of the evidence herein, to the shipper and carrier; or,

Second, Because the Sabine Trunk Company reasonably inferred from the circumstances that the Powell Company bought and had this lumber shipped for delivery to them at Sabine with the view of ultimately exporting it; the lumber company and the carriers, however, not knowing or caring about any destination other than Sabine; they having undertaken no duty beyond delivery at that place, and not having any care, concern, knowledge of, or connection with any shipment or movement beyond; or,

Third, Because the railway companies themselves knew inferentially from the circumstances that the lumber was intended for ultimate export, and (therefore, accorded it, (if in fact they did), certain privileges at the request of Powell Company, (extra free time and to be unhooked at the wharf), that were not required by the bill of lading, the original contract, or by any arrangement with, or direction of Sabine Trunk Company, and with which the Sabine Trunk Company had no connection.

Stated in another way, our proposition is that we must determine the character of the transportation service done for the Sabine Tram Company and for which it paid under protest by the particular shipments for which it contracted and arranged; and not by some subsequent independent shipment made by Powell Company with which neither the Sabine Tram Company nor the railways had any connection or concern; same being to parties and destinations not even known to them, nor determined even by Powell Company as to any particular portion or pieces of lumber until after its arrival and delivery at Sabine, in some instances, and not, in any case, until the invoices describing the lumber were inspected by Powell Company's agent *after shipment*, and its fitness for some one or another of Powell Company's orders thereby determined.

MATERIAL FACTS.

We are not satisfied with the statement contained in brief for Plaintiffs in Error, for the reason that counsel have so intermingled inferences and arguments with their statement that we fear the court will be unable to separate one from the other, and the statement, therefore, may be misleading. For that reason we will undertake to state what appear to us to be the material facts.

The Sabine Tram Company, in 1906, operated in Texas, a large saw mill plant situated near Buliff, Texas, being connected with that station on the line of the Texarkana & Fort Smith Railway Company by a switch track about a mile long, operated and controlled by said railway company.

During said year the plaintiff in error Texarkana & Fort Smith Railway Company operated, as a common carrier its railroad extending through Jefferson, Newton and Orange Counties, connecting Buliff, Texas, with Port Arthur, Texas, said road extending through the

City of Beaumont, and at that point connecting with the railroad line of the plaintiff in error Texas & New Orleans Railroad Company, which latter company during said period, operated, as a common carrier, its railroad through Jefferson County, extending from Beaumont to Sabine, the latter being a port of trans-shipment. At Beaumont these two railroads connected, and they were at all times involved in this dispute, connecting carriers at that point. The lines of these two roads connecting Ruliff with Sabine are entirely in Texas.

W. A. Powell Company, Ltd., was a purchaser of lumber and was engaged in exporting lumber and was generally known to the public, as well as to the Sabine Tram Company, as an exporter of lumber. The Powell Company had its head office at New Orleans, but purchased large quantities of lumber in Texas which was shipped to Port Arthur, or Sabine. All of the lumber shipped to the Powell Company at Sabine was ultimately exported by it.

On August 27-28, 1906, the W. A. Powell Company purchased from the Sabine Tram Company, defendant in error, 500,000 feet of long leaf yellow pine sawn timber; dimensions, 30 cubic average; price \$21 delivered in the water at *Orange*, or \$21.50 *f. o. b. cars Sabine*, at the option of the Sabine Tram Company; the delivery to be made during the months of September and October, 1906, and the terms of payment specified, being "usual terms" (R. 135). As stated, it was optional with the Sabine Tram Company as to whether it would deliver this lumber in the water at *Orange* or *f. o. b. cars at Sabine*. It chose to deliver the same *f. o. b. cars at Sabine, Texas*. The lumber thus contracted for was delivered to the Powell Company, *f. o. b. cars, at Sabine*, in thirty-three (33) carloads; a separate bill of lading being given for each car except in two instances where the lumber being too long for one car, two or twin cars were used for the load and a separate bill of lading ex-

executed therefor. These bills of lading bear, and the shipments were at, various dates from September 7, 1906, to November 2, 1906, all shipments being made in September and October except two carloads, one on November 1, and the other on November 2, 1906. Each bill of lading shows that the shipment was received from the Sabine Tram Company at Buliff, and consigned "Sabine Tram Company, Sabine, Texas. Notify W. A. Powell Company," and shows that it was executed for the receipt of one carload of rough lumber, except in the two instances, where twin cars were received, (Record, pp. 220-369). This lumber was transported by the Texarkana & Fort Smith Railway from Buliff to Beaumont over its line, and there turned over to the Texas & New Orleans Railroad Company, which transported the same from Beaumont to Sabine, *where it was delivered to Powell Company* upon payment of the freight demanded and the surrender of the bills of lading, (Record, pp. 159; 166-7).

Each bill of lading provides that the delivering carrier's liability shall cease "on the arrival of freight at the station or depot of delivery, after which the latter shall be liable as a warehouseman only."

Also this: "It is further agreed that the consignee shall receive and take away all freight received and transported hereunder *within twenty-four hours after its arrival at destination*" (Record, p. 222), etc.

Each freight or expense bill made out against Sabine Tram Company says: "*Goods must be removed within twenty-four hours after arrival.*" (Record, p. 228, etc.).

Flannagan testified (Record, p. 159): "I attended to the receiving of the lumber at Sabine. I was acting for the Sabine Tram Company in receiving the lumber and paid the freight on the shipments for the Sabine Tram Company. That is, I was acting for the Sabine Tram Company in paying freight charges, after which I took

charge of the stock for the W. A. Powell Company, Ltd. And I handled it and shipped it according to their instructions. Each car of lumber was unloaded from the car into the Southern Pacific Slip No. 3 and carried in stock for W. A. Powell Company, until shipped. The lumber remained in the slip any where from one to sixty days, according to the time each car was received, and after the lumber was unloaded into the slip, the same was under control of W. A. Powell Company, Ltd. None of the lumber was unloaded directly from the car on to the ship. Cars as they arrived were discharged into slip No. 3 at Sabine and the lumber held in stock for periods from one to thirty days and afterwards shipped on the "Manchuria," "Olive Moore," and "Chilford."

"W. A. Powell himself purchased this lumber, and after the lumber was delivered to purchasers at Sabine I controlled it as the agent of W. A. Powell Company, Ltd. The terms of payment were sight drafts with bill of lading attached. Draft drawn on W. A. Powell Company, Ltd., at New Orleans. I looked after the shipments of lumber out of Sabine for W. A. Powell Company, Ltd. The lumber was shipped to Europe on the steamers chartered by W. A. Powell Company, Ltd. My duties consisted of superintending the lumber, loading of the lumber, and I carried out the shipping instructions of W. A. Powell Company, Ltd. The contract for shipping from Sabine was made by W. A. Powell Company, Ltd., at New Orleans; Sabine Tram Company, Texas & New Orleans Railroad Company, and Texarkana & Fort Smith Railway Company had nothing to do with making any contracts with ships which carried the lumber from Sabine.

"I paid the freight there on the cars from Buliff to Sabine as the agent of the Sabine Tram Company, I did not pay the freight for the Powell Company, Ltd. I could not have obtained the possession of said cars with-

out paying the freight and surrendering the bill of lading."

C. E. Walden, manager of Sabine Tram Company, testified (Record, p. 137): "The Sabine Tram Company, had no duty connected with these shipments or any concern with the lumber *after delivery* at Sabine and the payment. I knew the destination to be Sabine, but did not know anything beyond that, and had no concern or connection with this lumber beyond delivery at Sabine. We got the money for it delivered there and that was as far as we were interested."

Flannagan, (Record, p. 162): "I presented the bills of lading to the agent of the T. & N. O. at Sabine, paid him the freight charges and he *delivered me the goods.*" Also, (Record, p. 163) "Bills of lading in every case were surrendered to the company before the cars were unloaded into the slips." * * * Flanagan, (Record, p. 174).

"In every instance we always paid the freight and surrendered the bill of lading before getting the cars with the exception of one time when two cars were unloaded when we didn't have the bill of lading. When we paid the freight and surrendered the bill of lading, a great many cases, the cars would probably be standing down in the yard, any where from a mile to a mile and a half to two miles away. If we wanted them we had them sent up to the slip and paid the freight. They did not have much to do, when the cars arrived they would switch them to the slip, then when we paid the freight we could unload them promptly. Sometime they sent them where we wanted before we paid the freight, but they were not surrendered to our possession until the freight was paid."

The statement is repeated several times in briefs and arguments by opposing counsel that the Sabine Tram Company notified the railway company that the lumber

shipped was for export. This is entirely incorrect and directly opposite of the testimony.

Each bill of lading was originally prepared by the agent of the Sabine Tram Company at the mill when a car was loaded, and sent from the mill to the depot at Ruliff, a distance of a mile or more, by a little boy about twelve years old, in the employ of the Sabine Tram Company, who delivered the same to the agent of the Texarkana & Fort Smith Railway Company at Ruliff, who in turn signed it on behalf of the railway company when the carload of lumber was switched out from the mill to the depot. Upon being executed the bill of lading was returned to the Sabine Tram Company by the little boy, and then mailed from the mill to the general offices of the Sabine Tram Company at Beaumont, whereupon the Sabine Tram Company endorsed the bill of lading, attached a draft thereto and placed the same in the bank at Beaumont for collection. The bank would transmit the bill of lading with draft attached to New Orleans for collection, where it would be presented to W. A. Powell Company, Ltd., which company would promptly pay the draft, taking up the bill of lading and thereupon forward the same to Chris Flanagan, its employe at Sabine, Texas. Upon receiving the bill of lading Flanagan would pay on behalf of Sabine Tram Company, under protest, the freight demanded, payment being made to the local agent at Sabine of the Texas & New Orleans Railroad Company, acting for both plaintiffs in error in the collection of the amount of freight charges claimed to be due, and surrender the bill of lading, whereupon the possession of the carload of lumber would be surrendered to Flanagan, agent of W. A. Powell Company, Ltd. Flanagan would thereupon instruct the Texas & New Orleans Railroad Company to switch the car from the point where it was standing at the depot or in the yard at Sabine, to Slip No. 3 where the same would be unloaded over the wharves of the Texas & New Orleans

Railroad Company into the slip of said railroad company and remain there in the possession of W. A. Powell Company from one to sixty days awaiting the arrival of a ship. (Record, pp. 158-165).

The depot of the Texas & New Orleans Railroad Company at Sabine is located about three city blocks or a quarter of a mile by its main and switch tracks, from Slip No. 3 where said lumber was unloaded, (Record, p. 168), and the carloads of lumber involved, after the bill of lading was surrendered, were usually forwarded promptly and directly from the depot to the slip, though on some occasions there were carloads of said lumber standing in the yards of the Texas & New Orleans Railroad Company at Sabine from a mile to a mile and a half from said slip, from which place in such instances, they would be switched to the slip. The red ink marks on the original bills of lading—not the duplicates—were placed there by the railroad companies after they were surrendered and without the consent or participation of Sabine Tram Company. (Record, p. 19).

The Sabine Tram Company made no other contract with Powell Company, written or verbal, except that of August 28, which was to deliver said lumber in the water at Orange or f. o. b. cars Sabine, and had no duty of, interest in, concern about, or connection with, shipping or forwarding of said lumber beyond the latter point, and actually did nothing in said connection, but only shipped the lumber on said bills of lading from Ruliff to Sabine. (Record, pp. 135-137).

Sabine Tram Company did not know, except by inference, at the time it shipped the various carloads of lumber, that it was going elsewhere than Sabine, though it did know from the circumstances that Powell Company would ultimately ship it out. (Record, pp. 132-151). It did not learn the actual destinations of this lumber until after this suit was brought, when it learned

the destinations to which Powell Company finally forwarded it, through the depositions of Chris Flanagan, and when it shipped the lumber from Ruliff it could not have designated any other destination than Sabine, because it knew no other; though the Sabine Tram Company supposed and expected that W. A. Powell Company was purchasing, not for any local use at Sabine, but ultimately to export the same by some subsequent shipment, either abroad or to some other State, or port; but with this it had no concern. Neither W. A. Powell Company nor any of its agents ever so told the Sabine Tram Company, but this opinion or assumption was entertained from its general knowledge of conditions. (Record, pp. 154-55).

The railroad companies in question had probably the same general knowledge. In addition to this, Flanagan as agent of the Powell Company, upon the arrival of the different cars and upon the surrender by him of the said bills of lading, after he had paid the freight and same had been turned over to him, would direct the cars of lumber in question to be unloaded into the slip, which was the course pursued when the lumber was intended as a cargo for a vessel, to be shipped abroad or to some other State, or port.

**DESTINATION OF LUMBER NOT DETERMINED
EVEN BY POWELL COMPANY BEFORE
IT LEFT RULIFF.**

Flanagan (Record, p. 162): "I do not know whether the lumber was bought to fill any other order already received or whether it was still an order being negotiated. * * * Sometime after the vessels were chartered I was notified by the W. A. Powell Company, Ltd., to load the vessels named with the different specifications, and I was also notified of the destination of the several vessels. The Sabine Tram Company was not

notified of these particulars by anybody, the Sabine Tram Company had nothing to do with it. It is a fact that the lumber was shipped to points outside of the United States and America. The lumber was originally intended for export outside of the United States, but *I do not think it was known that the lumber was destined for the ports mentioned before it left Ruliff.*"
• • • • • "None of this lumber was received at Ruliff on what is known as mill inspection before it was loaded on the cars," (Record, p. 169).

Flanagan, (Record, p. 163): "I paid the wharfage charges for W. A. Powell Company. • • • The lumber was unloaded onto the slips from the cars by Flanagan & Sons, stevedores, *under their contract with the W. A. Powell Company, Ltd.* Flanagan & Sons also loaded the lumber from the slips to the ships, and the lumber was discharged into the slips in order to measure the lumber, and also to accumulate enough to make a cargo. • • • It is not a fact that this lumber was intended for any particular vessel. • • • It is a fact that carloads of lumber remained in Sabine after the loading of one or two of the ships I have named, but the stuff did not suit the specifications of the first two vessels; and arrangements were made for the same to go forward on the last steamer." • • • • Flanagan, (Record, p. 165): "W. A. Powell Company, Ltd., purchased lumber from other mills besides the Sabine Tram Company, at that time. Some lumber from different mills went into each of these shipments."

Flanagan, (Record, p. 169): "I don't know whether this lumber covered by the contract now under consideration in this case was insured at the time it was in transit—or whether it was insured after it was loaded on the vessel. Whether they had an open policy covering that I couldn't say what the terms of the policy were. I know they had to insure the cargo after it was shipped on the vessel. *I am sure they did not insure it from the*

point of origin to the port of transshipment; whether it was covered after it was taken into their possession at the port of transshipment while waiting for shipment or only from the time of loading into the vessel, I can't say; but I am sure it was not insured from the point of origin up to the port of transshipment." • • • • •

Flanagan, (Record, p. 173): "When a car of this lumber left Ruliff, was loaded there, possibly W. A. Powell Company, Ltd., didn't know that particular car was going to any particular ship or to any particular port, but I knew it as soon as I got the invoice, copy of which was mailed to me the same day, the original was mailed to New Orleans—I knew what I was needing for the vessels, knew what I required, and those invoices showed what the cars contained, and if tallied after the cars reached there and suited, I applied them on the shipment."

The contracts for the vessels by which this lumber in question was actually shipped forward were made at New Orleans by W. A. Powell Company exclusively, with the Arthur H. Page Company, as follows: The contract for the "Manchuria" was made August 16, 1906; for the "Olive Moore," August 26, 1906; and for the "Chelford," October 23, 1906, (Record, p. 159). These ships, after being loaded with this and other lumber, sailed from Sabine, respectively, on September 26, October 24, and November 21, 1906, for European or foreign points. (Record, pp. 158-166). Neither railroad company nor the Sabine Tram Company had anything to do with the making or executing of these contracts for the ships, or with any forwarding arrangements for this lumber, and said railroad companies had no connection, contract, or arrangement with any ship or ship lines at Sabine for forwarding any freight carried there, and especially this freight (Record, pp. 159-162). When the W. A. Powell Company, Ltd., purchased this lumber it had made sales abroad and doubtless intended the lumber secured under

this contract to apply on some of those sales, but it was not known to it then to what particular or definite destination any of the lumber would be forwarded, and the Sabine Tram Company never did know the destinations until after this suit was filed and Chris Flanagan testified. A part of the lumber that went forward in the last cargo on the "Chelford" was shipped from Ruliff and arrived at Sabine before that ship was even chartered by W. A. Powell Company.

The various carloads of lumber in question would remain in the slip at Sabine on an average from one to sixty days awaiting the arrival of a ship. Sometime prior to the arrival of each ship and probably prior to the shipment of this lumber, W. A. Powell Company notified its agent, Chris Flanagan, at Sabine, of the specifications for each cargo to go into each of said ships and the destination. When any one of said carloads was loaded at Ruliff neither the Sabine Tram Company nor W. A. Powell Company, Ltd., nor Chris Flanagan then knew what particular ship it would ultimately go into, but an invoice of said carload would be forwarded and in due course would reach the hands of Chris Flanagan, when, after inspecting the same, he knew from the specifications in the invoice what ship it suited, and, therefore, into what ship that carload or the appropriate parts of it, would go. Flanagan would measure up the lumber at Sabine to see if it fitted the specifications and corresponded with the invoice and to determine the gain by the measurements used in Europe.

The W. A. Powell Company, Ltd., did not inspect or accept the lumber at the mill, (Record, p. 173). Nor did they insure the lumber until it reached Sabine. It had a general policy which covered the lumber *after it reached Sabine*, either upon its arrival or after it was placed in the ship. (The testimony is not clear exactly as to which time). Usually the bill of lading reached the hands of Chris Flanagan, agent of the W. A. Powell Company,

Ltd., before the cars reached Sabine; they being paid out at New Orleans by W. A. Powell Company and forwarded to Flanagan. In one or two instances, however, involving about three cars, the contrary occurred, the cars reaching Sabine before the bills of lading therefor. On account of this delay, Flanagan requested the Sabine Tram Company to mail the bills after that direct to him and to send drafts separately to New Orleans. This was done in some two or three instances involving some three or four cars, as a matter of accommodation. But in those instances usually the draft would be paid before the arrival of the car. The drafts would be for the full price of the lumber delivered at Sabine without making any deductions for freight. The freight, however, would be advanced out of the money of, and by W. A. Powell Company, Ltd., for the account of the Sabine Tram Company for the freight advanced. The actual machinery or arrangement by which this was done as follows:

On August 31, 1906, the Sabine Tram Company by a letter of that date directed the Powell Company to pay the freight, (meaning on its behalf), and if over four cents per hundred pounds, to pay the same under protest so as to protect the interest of the Sabine Tram Company. (Record, pp. 137-8)). When the expense bills for the first seven cars were presented by the Texas & New Orleans Railroad Company to Flanagan for payment the rate shown was six cents per hundred pounds which was thought to be excessive, whereupon Flanagan, before payment, called up Walden, the general manager of the Sabine Tram Company and asked for directions and Walden replied, directing Flanagan to pay the freight on behalf of the Sabine Tram Company, but to pay it under protest if over four cents. (Record, pp. 138-163). Flanagan paid all the freight for the Sabine Tram Company under a recorded protest and the Texas & New Orleans Railroad Company knew that the Sabine Tram Company was paying the freight under protest.

(Grand, pp. 221-222). The Saline Team Company would charge against the W. A. Powell Company, Ltd., for the full value of the lumber without deducting freight and the Powell Company, Ltd., in turn would under bill to the Saline Team Company for the amount of the freight allowed on the bill of lading which bills were paid in full by the Saline Team Company.

The expense (freight) bills for office freight of fifteen cents per 100 pounds, were made out by the agent of the Texas & New Orleans Railroad Company at Saline, Louisiana, and sent against the Saline Team Company for the freight due on each yardstick car. Sometimes these freight bills would be addressed simply "Saline Team Company," sometimes "Saline Team Company, c/o W. A. Powell Company, Ltd." "To Texas & New Orleans Railroad Co., Inc.". The first seven expense bills presented to the Saline Team Company were for freight at the rate of six cents per one hundred pounds; subsequently "overhead" or supplemental expense bills were made out and collected by mail railroad company for nine cents per hundred pounds additional. All subsequent expense bills were made out for fifteen cents per hundred pounds was demanded, collected and paid on each car, the payment being under protest. These expense bills identified the shipments, showing by the car number that the shipment was made from Biloxi, etc. The expense bills appear in the record. The letters and figures in red ink on same were made by the Texas & New Orleans Railroad Company, without any participation of the Saline Team Company. A challenge charge appears in the expense bill, but this was entered by the railroad company, without the knowledge or consent or participation of the Saline Team Company; which charge the Saline Team Company refused to pay or recognize. The W. A. Powell Company, Ltd., very much felt it was a charge properly against it, but not against the Saline Team Company. All demands and

collections by the defendant railroad companies were upon and presented written expense bills; and payments were made on behalf of the Sabine Tram Company upon the written bill of lading identified and coupled with the expense bill made out and presented by the defendants showing in each case that the freight demanded and collected was on account of a shipment from Ruliff to Sabine. Way-bills were made out by the defendant railroad companies, or one of them, for their own guidance in routing the lumber, on which they endorsed a memorandum that the lumber was "for export to Europe," but these way-bills were *ex parte* memoranda prepared by the railroad company alone, of which the plaintiff had no knowledge, and in the preparation of which it did not, in any way, participate.

When the memoranda appearing on the way-bills, showing that the shipments were "for export to Europe," were placed thereon does not appear, and Sabine Tram Company knew nothing of the way-bills till the defendants offered them on the trial. They are in lead pencil in most instances and appear to have been entered after the way-bills were originally made out. As originally made out these way-bills show under the head, "Marks, Consignee, and Destination," that the different cars were consigned to "SABINE TRAM COMPANY, SABINE, TEXAS, NOTIFY W. A. POWELL COMPANY, LIMITED." On one of the way-bills this latter expression, "Notify W. A. Powell Company, Limited," does not appear.

There are thirty bills of lading executed on twenty-four separate dates between September 7, and November 2, 1906. The total number of pounds of lumber transported by the defendants from Ruliff to Sabine under said bills of lading between said dates was 2,104,000 pounds on which the defendants demanded, collected and received and the Sabine Tram Company paid fifteen cents per hundred pounds or \$3,156.00, which was \$1,-

788.33 more than the freight would have been at 6½c per hundred pounds; all payments of said freight by the plaintiff being made prior to December 14, 1906, (Record, p. 146). There were only five separate payments made to the agent of the Texas & New Orleans Railroad Company covering said freight, due to the fact that Flanagan, who was acting for the Sabine Tram Company in the payment of said freight, would allow a number of expense bills to accumulate, and pay out a number of them at one time. (Record, p. ____). Flanagan was regularly employed by the W. A. Powell Company, Ltd., and was the agent for said company and the payment of freight was made out of the money of W. A. Powell Company, Ltd., advanced for the Sabine Tram Company, and consisted of the items stated above. He was the agent of the Sabine Tram Company in the payment of said freight only in the sense that the Sabine Tram Company requested and directed both him and the W. A. Powell Company, Ltd., to advance the money for that purpose which it was to repay, and Flanagan knew that according to the usual course of trade such would have been the method of handling the freight and without instructions would have pursued that method. He received no compensation from the Sabine Tram Company.

Sabine and Sabine Pass are both ports on the Gulf of Mexico, and on the Texas & New Orleans Railroad, within a mile or mile and a half of one another. The rate on State or local shipments on lumber in carload lots, from Buliff to Beaumont, Port Arthur or Sabine Pass via Texarkana & Fort Smith Railroad or as to Sabine Pass, via the Texarkana & Fort Smith and the Texas & New Orleans Railroad, as established by the Railroad Commission of Texas was 4 cents per 100 pounds, (Record, p. 178; and Circular 1169, effective August 13, 1900). The State or local rate on lumber in carload lots from Beaumont to Sabine, over the Texas & New Orleans Railroad, established by the Railroad Commission of

Texas was 2½ cents per 100 pounds effective August 1, 1902; corrected authorities 76, 80, 102 and 118, Railroad Commission of Texas. (Record, pp. 180; 475). The Railroad Commission long prior to the transactions in question, established the following general rule applicable and in force at the dates of these shipments: "Appendix A, showing, all the tariffs made by the commission in the form in which at the date of this report they exist, all matter altered or supplemented having been eliminated. GENERAL RULES GOVERNING APPLICATION OF ALL RATES * * * RULES: The rates between two given points shall not in any case exceed the sum of rates applying between such given points and a point intermediate." (Record, p. 180; R. R. Com. Annual Report 1906, p. 65).

Prior to the shipments in question the Texas & New Orleans Railroad Company in connection with the defendant, Texarkana & Fort Smith Railroad Company, had published an interstate rate on lumber from Ruliff to Sabine of 4 cents per hundred pounds (See I. C. C. No. 551, Item 101, page 44 thereof; Record, p. 464). By supplement No. 10 to I. C. C. No. 551, effective August 6, 1906, the Texas & New Orleans Railroad Company, or rather the system of which it is a part, published with the Interstate Commerce Commission an export rate on lumber and articles taking the same rates, carloads, minimum weight 40,000 pounds, of 5 cents per 100 pounds from Beaumont, Texas, to *Sabine Pass*, Texas. (See Item 181, page 7, of said supplement; Record, 474).

The Kansas City Southern Railway Company and the Texarkana & Fort Smith Railway Company, published with the Interstate Commerce Commission, effective May 17, 1900, a joint tariff under the head of "Joint Distance Tariff, Port Arthur Route, No. 822 A" being I. C. C. No. 841. Various amendments to this tariff are shown in the record. Under this tariff, lumber in carload lots, when it was an interstate or foreign shipment,

Texas local traffic being expressly excepted, took a rate of ten cents per hundred pounds on distance not less than 25 miles and not exceeding 30 miles. (Record, pp. 481, *et seq.*). However, this tariff was superseded and annulled by later tariffs, filed by the Texarkana & Fort Smith Railroad Company; one of which was a joint tariff published by the "Sunset Route" System, showing a rate of four cents per hundred pounds from Ruliff to Sabine, (I. C. C. No. 551, Item 101; Record, p. 464); which rate is likewise shown in the record by Item 30 in Amendment No. 22 to I. C. C. No. 1619, published by the Texarkana & Fort Smith Railroad Company itself, which became effective March 5, 1906, and was in force at the dates of all the said shipments and in no wise superseded or altered until after this controversy came up, when the Texarkana & Fort Smith Railway Company published its Amendment No. 30 to I. C. C. No. 1619 issued October 7, 1907, effective November 10, 1907, which appears in the record. Item 35 of said Amendment 30 seeks to alter and cancel said Item 30, shown by the previous Amendment No. 22; but this was after all the shipments. The 15 cent rate was divided between the defendants in the proportion of 5 cents per 100 pounds to the Texas & New Orleans and 10 cents per 100 pounds to the Texarkana & Fort Smith Railway, by which both violated the State Commission rate, if applicable, and the Texarkana & Fort Smith Railway violated both the State rate and its own published interstate rate.

Lumber of the dimensions prescribed in the sale from the Sabine Tram Company to the Powell Company, Ltd., was such as is usually exported, and any well posted mill man would probably know that the Powell Company purchased it with the view of ultimately shipping it or exporting it from Sabine. Sabine is a very small town and Sabine Tram Company knew of no instance where carloads of lumber were shipped there and actually used locally. Lumber shipped for local consumption does not

go into Slip No. 3 or on the docks, but is unloaded at the depot or on some switch track. A witness testified that the railroad company had a rule at the time of these shipments that lumber in carload lots intended for export had to be unloaded in seven days, while freight to be used locally had to be unloaded in 48 hours. Export lumber could remain in the slip free of charge other than the original wharfage charge thirty days, which was called 30 days' free storage. The free storage on local business was less, the exact amount not stated.

Under the bills of lading this freight had to be received and removed in *Twenty-four hours*. So say the *expense bills*, also.

It was necessary in the business of Powell Company, Ltd., to collect, and he and others frequently collected lumber in stock at the Pass, from which they ultimately selected their cargoes for export, and loaded the ships according to the specifications required.

The Sabine Tram Company never shipped to Sabine a carload of lumber which was known to it to be actually used in its local trade; though as to these shipments and others similar it had no concern about that, and no duty or care about its going on.

The physical handling of the lumber from Ruliff to Sabine and into the ship would have been the same whether the freight was paid by the Sabine Tram Company or W. A. Powell Company, Ltd., subject only to the qualification that the Powell Company could not get possession of any car until it paid the freight and surrendered the bill of lading and the cars remained on the track at Sabine until that occurred. (Record, p. 167).

While loading the first ship, or the first and second, Flanagan found that some of the lumber in question did not fit the specifications for those ships and held it over for the last cargo. Lumber was purchased by the Powell

Company, Ltd., from other mills and when the specifications suited a particular ship the same was put in as a part of the cargo along with the lumber purchased from the Sabine Tram Company.

THE SHIPMENTS WERE INTRASTATE, AND THEREFORE THE LOCAL STATE RATE APPLIED; AND THE PLAINTIFFS IN ERROR BECAME LIABLE TO PAY THE PENALTIES AND SUFFER THE CONSEQUENCES THAT THE TEXAS LAWS PRESCRIBED FOR CHARGING A HIGHER RATE.

AUTHORITIES.

G. C. & S. F. Ry. Co. vs. Texas, 204 U. S., 403.
Se. 97 Texas, 274.
Coe vs. Erroll, 116 U. S., 524.
Pa. R. R. Co. vs. Knight, 192 U. S., 27.
Diamond Match Co. vs. Oontonagon, 188 U. S., 94.
Wabash Ry. Co. vs. Illinois, 118 U. S., 572.
Houston Direct Nav. Co. vs. Insurance Co., 89 Tex., 6.
The Daniel Ball, 10 Wall., 565.

ARGUMENT.

The fundamental question in this case is, of course, whether or not the shipments were intra-state, and, therefore, subject to the rates fixed by the Railroad Commission of Texas.

The plaintiff claims that the shipments were such, while the defendants maintain that the shipments from Ruliff to Sabine were a part of a foreign shipment and, therefore, subject to the rules and regulations fixed by, and the rates published by them with, the Interstate Commerce Commission.

The supreme test to be applied to the shipments in question, in determining whether or not they were either interstate or foreign commerce, is to be found in the answer to the following question: Was the lumber when it left Ruliff actually launched finally on its journey to a point in Europe; that is to say, was it committed by the contract, or by any arrangement, between the shipper and the railroad company, or provided for by either, to a common carrier for transportation on its continuous final journey to a destination beyond Sabine, Texas? We maintain that the shipments in question were not a part of foreign commerce for the following reasons:

(1) The lumber shipped was by the only shipment contract, or arrangement provided, destined for Sabine, and no other point when it left Ruliff. Nor was this shipment arrangement changed while the lumber was in transit.

(2) The lumber was not committed to a common carrier for its final and continuous voyage to a foreign point.

(3) There was no known or fixed destination to a foreign point; or any destination beyond Sabine *within contemplation of the shipment under discussion.*

(4) The parties to each of the shipping contracts in question not only, did not *contract* for a continuous shipment to a foreign point, but on the contrary they did not even *intend* that, *by and through the agency of that shipment*, the freight should go beyond Sabine; nor did they then provide any means or arrangements for its movement beyond that point: that being left to an intervening third party by a subsequent act.

(5) The lumber was delivered to Powell Company, as it was intended to be, at Sabine, and it took the intervention of a new and independent shipment arrangement, or contract, to move it beyond that point.

The shipments in these several essential features lacked the elements of foreign commerce, and being from a point in Texas to a point in Texas, over a route entirely in Texas, were necessarily local, or intrastate.

The contract, or arrangement made between the shipper and carrier may and usually does fix the character of commerce moving under it. Of course, the *entire* contract, or arrangement, that is, the entire shipment actually made between them, must be looked to. If any part of this arrangement is to be found out of the bill of lading that must be considered also. But when it alone, as in the instant case, and, in fact, usually, evidences the entire arrangement, it is the most significant fact in determining the character of the commerce. So if it is the only and the entire contract, or arrangement, and it provides only for a local movement, the particular shipment moving under it is necessarily intrastate, regardless of the mere *intent* of the shipper or some third person, to ship the property again, at some short or long interval in the future, (the space of time being entirely immaterial), or of any subsequent act of shipment; for each shipment must be judged by its *own environments and terms*; not by the circumstances of a *prior or subsequent* shipment.

Now, it is readily conceded that the bill of lading may not be the only test or evidence of the shipment. We can conceive and understand that there may be some additional or outside arrangement for a continuous final movement to a destination beyond that named in the bill of lading; or the bill of lading may itself note a forward continuous movement beyond the destination named. If so, of course, the whole contract or arrangement between the *parties to the shipment*, not the acts, intent, or contract of intervening third persons, must be looked to.

The Houston Direct Navigation Company case, (89 Tex., p. 6), furnishes a very good illustration of what we mean. In that case Sherwood & Company the owners

of some of the cotton involved, shipped the same from Houston via Galveston to Liverpool. The bill of lading showed a receipt of the cotton at Houston to be delivered at Galveston; but it also showed further, by a written provision therein, that the delivery was to be to the Mallory Ship Line as a forwarding and connecting line at Galveston, for a continuous forward movement, when its liability ceased; and an arrangement, evidenced by this stipulation in the bill of lading itself and existing in the shipment contract, as the court found, was for a continuous final through shipment from Houston to Liverpool, under which arrangement the navigation company was to carry the cotton to Galveston and turn it over to the Mallory Line to be forwarded thence to New York, thence to Liverpool, by a continuous movement from Houston. Under the shipping arrangement *at Houston, then and there made*, the cotton was launched, when it left Houston, the origin of the shipment, on its final continuous movement to Liverpool. So the movement from Houston to Galveston was necessarily, under these circumstances, only a part of a foreign shipment to Liverpool, although the bill of lading was in a sense local. Now, we concede that even had the bill of lading not evidenced a duty by the navigation company, (which it did, however), to deliver to the Mallory Line for a continuous forward movement, yet if there had actually been otherwise a contract or arrangement made at Houston, as a part of that very shipment, for a continuous movement to Liverpool, the shipment would have been from beginning to end, and every part of it, an export shipment.

When we say *continuous* we do not mean necessarily continuous in point of time; that is, a movement free of delays; but, we mean an unbroken movement, proceeding under the original arrangement, or shipment.

If, as in the case at bar, the freight would stop through the inherent inertia of the shipping arrangements made

at the origin—from the absence of means provided therein for a connected and forward movement through the city where the port exists, and but for some other and further intervening act of shipment—if it knows, *by the original contract, or arrangement*, no connecting carrier and is directed to none; and if, in short, all the machinery of *a new shipment* must intervene to direct and start it on its way—surely the movement is not the *final continuous movement* required.

The distinctions above made and the positions taken find clear support both in the terms of the Act Regulating Commerce, passed by Congress, and the decisions on the subject.

It must be borne in mind that under the Constitution of the United States the power of Congress is "to regulate commerce with foreign nations, among the several States and with the Indian Tribes," (Article 1, Sec. 8, Par. 3). Congress is given power to make all laws which should be necessary and proper for the carrying into effect this power. Congress has no power to regulate commerce wholly within a State that is not part of interstate or foreign commerce. Bearing in mind these fundamental principles we are assisted in interpreting the act of Congress passed in pursuance of the above constitutional power for the purpose of regulating interstate and foreign commerce. We quote so much of the act as bears on the question. The part of section 1 of said act applicable, reads as follows:

"That the provisions of this Act shall apply
• • • • • to the transportation • • • • • of
property *shipped* from one place in the United
States to a foreign country and carried from such
place to a point of trans-shipment, or *shipped* from
a port of entry either in the United States or any
adjacent foreign country; provided, however, that
the provisions of this Act shall not apply to the
transportation of passengers or property or to the

receiving, delivering, storage or handling of property wholly within one State and not *shipped* to or from a foreign country from or to any State or Territory as aforesaid." (THE ITALICS ARE OURS.)

The proper interpretation of that portion of the act applicable, quoted above, turns upon the word "*shipped*." In order for the act to apply to the inland part of a shipment to a foreign country, when said inland part is wholly within the State, the freight must have been *shipped* to a foreign country, and it is never *shipped* to a foreign country until, it is launched upon its final continuous trip to a foreign destination.

The whole difference between counsel in this case may be thus stated: Counsel for plaintiffs in error contend that certain pieces or parts of the lumber were *shipped*, for illustration, to Greenock, Scotland, when they left Ruliff, not because of anything in the actual contract of shipment, but because the Powell Company, the purchaser, to whom it was delivered under the terms of the contract at Sabine, *intended* ultimately to export, and did ultimately, by an independent arrangement, export a part of the lumber shipped from Ruliff to that point, after having selected out at Sabine the pieces suitable for that particular cargo.

Opposing counsel maintain this contention in the face of the fact that the evidence shows that such destination, (Greenock), was not known even to Powell Company, much less to the Sabine Tram Company, as the ultimate destination of any particular portion of the lumber when it left Ruliff, the former knowing the destination only after its agent, Flanagan, received and inspected the invoice at Sabine and saw that the specifications suited this or that cargo; the latter not until after Flanagan testified in this suit.

On the other hand, defendant in error contends and maintains that, although it assumed and reasonably knew from the circumstances, as a matter of inference,

at the time of its shipment, that the Powell Company had the intent to reship the lumber either abroad or to some other port in this country, yet inasmuch as the Sabine Tram Company made an actual shipment to Sabine, and provided for no other, directed no other, and had no duty or concern with any other shipment, therefore the character of the shipment under which the excessive collections of freight were made was necessarily determined by the contract and not the ultimate intent of the Powell Company, and was therefor local.

The point involved is to determine when and by what means freight is "shipped" to a foreign destination, and when an inland movement is a part of such foreign shipment.

Our contention is that all parties can and must rely on the *actual shipment* under which the freight *then* moves.

The case most nearly in point, so far as we have been able to find, is that of the G. C. & S. F. Ry. Co. vs. The State of Texas, 204 U. S., 403; same case, 97 Texas, 274. (We will refer to this case as the "Texarkana Grain case"). Briefly stated, the facts are as follows:

The Hardin Grain Company of Kansas City, Missouri, contracted to sell and deliver to Saylor & Burnett, at Goldthwaite, Texas, two carloads of corn of a certain kind. In order to fill the order the Hardin Grain Company contracted with the Harroun Commission Company, likewise of Kansas City, for two carloads of such corn to be delivered to it at Texarkana, Texas, not knowing or caring at the time of the contract from what source or place the corn came. Before delivery of said corn at Texarkana, however, the Hardin Grain Company ascertained that the Harroun Commission Company had shipped the corn with which it intended to fill the order from Hudson, South Dakota, consigned to Forrester Bros., Texarkana, Texas. The corn by its routing came

through Kansas City where it was re-sacked and a new bill of lading taken out from Kansas City, Missouri, to Texarkana, Texas, said corn being shipped forward from Kansas City via the Kansas City Southern Railway Company under said new bill of lading, showing that it was received at Kansas City of Forrester Bros., and consigned to Shipper's Order, notify Harroun Commission Company, Texarkana, Texas. On the date of the shipment of said corn from Kansas City to Texarkana, the Harroun Commission Company informed the Hardin Grain Company that the corn to fill the latter's order had been loaded at Kansas City to start to Texarkana, and requested instructions as to how the corn should be shipped from Texarkana for the guidance of their agent, Atkins, at that place, who would attend to such reshipping for the Hardin Grain Company as per former understanding. Thereupon and in compliance with such request, new bills of lading were made out by the Hardin Grain Company in Kansas City and furnished to the Harroun Commission Company to be forwarded to their agent at Texarkana. These bills of lading were to be executed by the Texas & Pacific Railway Company at Texarkana and to Hardin Grain Company, acting through Atkins, and receipted for shipments of corn from Texarkana to Goldthwaite, Texas, consigned to "Shipper's Order, notify Saylor & Burnette."

So the Hardin Grain Company intended when the corn left Kansas City for Texarkana on the interstate bill of lading, that it should be again reshipped to Goldthwaite on a local or State bill of lading. The agent at Texarkana, Atkins, acting on behalf both of the Hardin Grain Company, took out the new bill of lading referred to above, surrendering the old, which new bill acknowledged receipt of the corn at Texarkana from Hardin Grain Company for transportation via the Texas & Pacific and the Gulf, Colorado & Santa Fe Railways from Texarkana to Goldthwaite; and the corn moved over said lines

in Texas, from Texarkana to Goldthwaite. The same cars in which the corn moved from Kansas City to Texarkana, after remaining at Texarkana with no load on board, for five days, were switched over from the Kansas City Southern tracks to the Texas & Pacific tracks and hauled forward to Goldthwaite without ever being opened. Neither the Hardin Grain Company nor the Kansas Commission Company had any storage facilities at Texarkana. The Gulf, Colorado & Santa Fe Railway received the corn from its connecting carrier, the Texas & Pacific Railway, and transported it under the bill of lading executed at Texarkana in the original transaction of which it did not participate. So it contended that the shipment from Texarkana to Goldthwaite was because of the purpose of the Hardin Grain Company to ship the corn on from Texarkana, a part of an interstate shipment from Hudson, South Dakota, to Goldthwaite, and on this theory demanded and collected a higher rate than the local rate from Texarkana to Goldthwaite as fixed by the State commission. Saylor & Barnett, purchasers of the corn, made complaint to the Railroad Commission of Texas, and, as a result thereof, a suit was brought by the State of Texas against the Gulf, Colorado & Santa Fe Railway Company for a penalty for a violation of the local rate. The Hardin Grain Company kept posted as to rates and knew that there was some advantage to it in shipping on the corn of the interstate rate to Texarkana plus the State rate from Texarkana to Goldthwaite, and for the purpose of gaining this advantage it contracted for the delivery of the corn to it at Texarkana.

It was held both by our own Supreme Court and the United States Supreme Court that the shipment from Texarkana to Goldthwaite was an independent shipment, evidenced by an independent contract for local shipment and being entirely within the State of Texas, was subject to the rates fixed by the Texas Commission, and

therefore that the Gulf, Colorado & Santa Fe Railway Company was liable for the penalty. We quote at length from the decision of the latter court, because it practically, in our opinion, settles this case and covers all points at issue on the character of shipments involved.

Mr. Justice Brewer, speaking for the court, says:

"It is undoubtedly true that the character of a shipment, whether local or interstate, is not changed by a transfer of title during the transportation. But whether it be one or the other may depend on the contract of shipment. The rights and obligations of carriers and shippers were reciprocal. The first contract of shipment in this case was from Hudson to Texarkana. During that transportation a contract was made at Kansas City for the sale of the corn, but that did not affect the character of the shipment from Hudson to Texarkana. It was an interstate shipment after the contract of sale as well as before. In other words, the transportation which was contracted for, and which was not changed by any act of the parties, was transportation of the corn from Hudson to Texarkana—that is, an interstate shipment. The control over goods in process of transportation, which may be repeatedly changed by sales is one thing; the transportation is another thing, and follows the contract of shipment, until that is changed by the agreement of owner and carrier. Neither the Harroun nor the Hardin Company changed or offered to change the contract of shipment theretofore made and purchased the corn to be delivered at Texarkana—that is, on the completion of the existing contract. When the Hardin Company accepted the corn at Texarkana the transportation contracted for ended. The carrier was under no obligation to carry it further. It transferred the corn, in obedience to the demands of the owner, to the Texas & Pacific Railway Company, to be delivered by it, under its contract with such owner. Whatever obligations may rest upon the carrier as the terminus of its transportation to deliver to some further carrier, in obedience to the instructions of the owner, it is acting not as a carrier, but simply as a forwarder. No new arrangements having been made for transportation, the corn was delivered to the Hardin Company at Texarkana. Whatever may have been the thought or purpose of the Har-

din Company in respect to the further disposition of the corn, was a matter immaterial so far as the contemplated transportation was concerned.

In this respect there was no difference between an interstate passenger and an interstate transportation. If Harroun for instance had purchased at Hudson a ticket for interstate carriage to Texarkana intending all the while after he reached Texarkana to go to Goldthwaite, he would not be entitled on his arrival at Texarkana to a new ticket from Texarkana to Goldthwaite, at the proportionate fraction of the rate prescribed by the Interstate Commerce Commission for carriage from Hudson to Goldthwaite. The one contract of the railroad company having been finished, he must make a new contract for his carriage to Goldthwaite and that would be subject to the law of the State within which that carriage was to be made.

"The question may be looked at from another point of view. Supposing a carload of goods was shipped from Goldthwaite to Texarkana under a bill of lading calling for only that transportation, and supposing that the laws of Texas required, subject to penalty, that such goods should be carried in a particular kind of car, can there be any doubt that the carrier would be subject to the penalty, although it should appear that the shipper intended after the goods had reached Texarkana to forward them to some other place outside the State? To state the question in other words, if the only contract of shipment was for local transportation, would the State law in respect to the mode of transportation be set one side by a Federal law in respect to interstate transportation on the ground that the shipper intended after the one contract of shipment had been completed to forward the goods to some place outside the State? *Coe vs. Errol*, 116 U. S., 517-527.

"Again, it appeared that this corn remained five days in Texarkana. The Hardin Company was under no obligation to ship it further. It could in any other way it saw fit, have provided corn for delivery to Saylor & Burnett, and unloaded and used that car of corn in Texarkana. It must be remembered that the corn was not paid for by the Hardin Company until its receipt in Texarkana. It was paid for on receipt and delivery to the Hardin Company. Then, and not till then, did the

Hardin Company have full title to and control of the corn, and that was after the first contract of transportation had been completed.

“It must be further remembered that no bill of lading was issued from Texarkana to Goldthwaite until after the arrival of the corn at Texarkana, the completion of the first contract for transportation, the acceptance and payment of the Hardin Company. In many cases it would work the grossest injustice to a carrier if it could not rely on the contract of shipment it has made, know whether it was bound to obey the State or Federal law, or, obeying the former, find itself mulcted in penalties for not obeying the law of the other jurisdiction, simply because the shipper intended a transportation beyond that specified in the contract. It must be remembered that there is no presumption that a transportation when commenced is to be continued beyond the State limits and the carrier ought to be able to depend upon the contract which it has made and must conform to the liability imposed by that contract.

“We see no error in the proceedings and the judgment of the Supreme Court of Texas is

“Affirmed.”

The opinion from which we have just quoted fully establishes the following important points, all involved in the discussion of the case at bar, to-wit:

(1) That the character of each shipment is determined by its own arrangement or contract, and not that of some prior or subsequent shipment; and that the bill of lading when the only and entire contract, or arrangement, controls.

(2) That the thought, purpose, or intent of the shipper—much less that of some third person—“in respect to the further disposition” of the freight is immaterial in determining the character of a shipment, complete within itself.

(3) That the character of the shipment, whether local or interstate, is not changed by a *transfer of title* to the property shipped during the transportation. So it is

immaterial whether the taking up of the bills of lading by Powell Company pending the arrival of the cars at Sabine operated as a technical change of title to the lumber or not.

(4) The time intervening between two shipments, change of cars, loading and unloading, are not determining factors, but only circumstances that may be in some instances, looked to in determining the shipping arrangement or contract when otherwise in doubt.

The principles laid down in the Texarkana case are not new. They find abundant support in other decisions of the same court and in the decisions of numerous State courts including our own Supreme Court, and the Interstate Commerce Commission.

The Supreme Court of Texas in the same case, (97 Texas, 286), after pointing out that its former opinion in the Houston Direct Navigation Company case, (89 Texas), was based upon the proposition that the "evidence showed that the cotton was the property of foreign buyers to whom it was consigned, and that the consignors contemplated an immediate and *continuous shipment* to foreign ports," and that such fact was shown by the bill of lading itself, says:

"But such is not the case before us. Here the Harroun Commission Company, the original consignors, were the owners of the corn when shipped and until its arrival at Texarkana and delivery there to the Hardin Grain Company in compliance with their contract for its sale. *They neither intended nor contemplated any shipment beyond the point to which it was consigned.* When the corn was delivered to them at Texarkana, the contract on the part of the carriers was performed and the carriage so far was at an end. *Even had they known that the buyers intended to have the corn transported to a further point in Texas, we fail to see that it would have altered the case.* Having ceased to be the owners of the corn upon its delivery to the Hardin Grain Company at Texarkana, as contemplated in their contract, they

had no further control over it nor had they any further concern with it." (The italics are ours).

This language is peculiarly applicable and appropriate to the case at bar.

The distinctions for which we contend are clearly recognized by the Supreme Court of Texas, and Houston Direct Navigation Company case (89 Texas, 6), on which the opposing counsel rely. The basis of the decision in that case to the effect that the movement of the cotton shipped from Houston to Galveston was a part of a shipment to Liverpool is to be discovered in the following extract from the opinion of the court which will be found entirely sufficient to distinguish that from the present case:

"The facts of this case show that the owners of the cotton lived in Liverpool, and the cotton itself was, by their agents, put in transportation by delivery to the navigation company, to be carried by it to the City of Galveston and there delivered to the Mallory Line, by which it was to be transported to New York, and thence by connecting line of steamers to the City of Liverpool. *The bill of lading upon its face showed that the navigation company was to deliver the cotton to the Mallory Line in Galveston, at which time the liability of the navigation company should cease and that of the Mallory Line should attach. There can be no doubt that the destination of the cotton at the time of its delivery to the navigation company was fixed and determined, and the point to which it was destined for final delivery was beyond the limits of this State. It is equally clear from the bill of lading and other testimony that a continuous voyage was contemplated, and the trip between Houston and Galveston was simply a part of that voyage.*" (The italics are ours).

Since the case at bar was decided by the Texas Court of Civil Appeals, there have been rendered two decisions by this court and one by the Supreme Court of Texas, upon which plaintiffs in error rely chiefly for support of their view of the questions under discussion, they be-

ing Railway Commission of Ohio vs. Worthington, Receiver, 225 U. S., 101; Southern Pacific Terminal Company vs. Interstate Commerce Commission, 219 U. S., 498; and G. H. & S. A. Ry. Co. vs. Wood, Hagenbarth Cattle Co., 146 S. W., 538 (Tex. Sup.).

We think each of these cases is clearly distinguishable from the case at bar, and that they, properly understood, in no wise affect or qualify the authority of G. C. & S. F. Ry. Co. vs. Texas, 204 U. S. (so called Texarkana grain case), and the same case, 97 Texas, 274.

This court clearly points out the facts in the Worthington case that distinguish it from the Texarkana case, (204 U. S.), and in doing so furnishes a sufficient answer to the contention of plaintiffs in error that the former aids them in the case at bar. The *syllabus* expresses tersely what was held in the Worthington case, as follows:

"An unconstitutional attempt directly to regulate and control interstate commerce is made by an order of the Ohio Railroad Commission establishing a freight rate on 'lake-cargo coal' billed from Ohio coal fields to Ohio ports on Lake Erie, where such rate is applicable only to such coal as is in fact placed upon vessels at those ports for carriage to points outside the State, and covers the actual placing of such coal upon the vessels, and the trimming or distributing of it in the holds so that the vessel may safely proceed on their interstate journey."

The facts of the Worthington case, so far as pertinent, were as follows:

A rate of seventy cents per hundred on "lake-cargo coal" shipped from No. 8 District in Ohio through the ports of Huron and Cleveland in that State to points out of that State (the shipments, however, being partially effected under bills of lading calling for Huron and Cleveland as the destination), was fixed by the Railroad Commission of Ohio. The rate covered in addition to the rail transportation the services of unloading the coal

from the cars into the vessels and trimming it in the holds of the vessels so that they could safely proceed. The operator who shipped the coal consigned it to himself at one of the ports named where he had previously provided a vessel to receive the coal upon its arrival at port and carry it out of the State of Ohio. The coal was marked "lake-cargo coal" by the shipper, by which he intended to show that it had been set aside for transportation by means of the vessels provided by him to points out of the State. The opinion dwells upon the following significant facts, which are within themselves sufficient to distinguish that cause from the one at bar:

"The operator notifies the railroad that at a certain time a vessel will be at Huron to load so many tons of the particular grade of coal. The railroad then picks up such cars of the operator's coal as are necessary to fill the cargo, and moves them onto the dock alongside of the vessel, loads the vessel, trims or distributes the coal properly in her holds, and furnishes the shipper with a cargo statement showing the cars, numbers and weights and the total tons of coal in the vessel, and on which information the bill of lading for the vessel's shipment is made out."

Discussing the facts, the court says:

"The 70 cent rate covers the transportation of the coal to Huron, *the placing of it on board the vessels, and, if necessary, trimming it for the continuance of its interstate journey.* It is true, as argued by the learned counsel for the commission, that this coal may be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time, when it is to be put upon vessels and shipped out of the State, *but it must always be remembered that this seventy cent rate applies solely to such coal as is in fact placed upon vessels for carriage to beyond the State points.*" (Italics ours).

Thereupon the court concludes:

"By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, *and the*

rate fixed by the commission, which is in controversy here, is applicable alone to coal which is thus, from the beginning to the end of its transportation an interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel, and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage." (Italics ours).

This court distinguishes the Worthington case from the G. C. & S. F. Ry. Co. case, (204 U. S.), by pointing out that in the latter case, the shipment from Texarkana to Goldthwaite, was an independent intrastate shipment made under a new and independent contract. So we say in the case at bar that the shipment from Ruliff to Sabine was one shipment, and the subsequent shipments from Sabine to European points were independent and new shipments.

We submit that the Worthington case differs from the case at bar in the following respects:

1. In the Worthington case, the coal shipped was set aside by the shipper himself as "lake-cargo coal," by which he marked and designated it for a foreign or interstate shipment for which he himself provided and arranged facilities and machinery, to wit: The vessel, and the arrangement with the railroad company for it to unload the coal into the vessel for transportation to some beyond the State point selected by him; whereas in the case at bar, the Sabine Tram Company, the shipper, did not intend or designate the lumber for any purpose other than delivery at Sabine under its contract, nor did it make any provision for shipment or delivery beyond.

2. In the Worthington case, the carrier itself, under the shipping arrangement, agreed to perform and did perform an "integral part" of the foreign shipment, in that it loaded the coal into the hold of the vessel, which was an integral part of the foreign transportation; whereas, in the case at bar the carriers did not agree to

perform and did not perform any part of the services incident to the final foreign shipments from Sabine to European ports; that being performed by Powell Company under an independent contract, to which neither the Sabine Tram Company nor the railroad companies were parties and in which they took no part.

3. The rate prescribed by the Railroad Commission of Ohio in the Worthington case embraced within its terms an integral part of a foreign shipment; whereas the rate fixed by the Railroad Commission of Texas was merely for transportation from Ruliff to Sabine.

The question actually decided in the Southern Pacific Terminal Co. case, (219 U. S. 498), was entirely different from that here presented.

The character of no particular shipment was determined; the court simply holding (1) that the terminal company, which was charged with granting undue preferences to one Young, was in fact a part of the G. H. & S. A. Ry. Co., and, therefore, subject to the jurisdiction of the Interstate Commerce Commission in so far as interstate or foreign commerce passed over the tracks and docks of the terminal company, and (2) that an undue preference affecting a stream of interstate and foreign commerce was granted by the terminal company to one Young. The facts developed in that case showed that "through shipments on the railroad lines from and to points in different States of the Union pass and re-pass over the docks of the terminal company," and that shipments by water were constantly moving out of the State over the tracks of the terminal company and certain docks (a part of its terminal facilities), leased to Young. Therefore, the commission held that it could prohibit and regulate an arrangement between Young and the terminal company under which he got ample terminal facilities and space for his cotton seed meal and cake business at an annual rental, he paying no wharf charges

on shipments over his wharves and docks; whereas other shippers were granted no such facilities and had to pay a fixed wharfage charge, which put them to a disadvantage as against Young.

The manifest reason underlying this decision was, that such an arrangement directly affected a vast *stream* of foreign and interstate commerce; for, plainly, every sack of meal that came to Young's docks from other States, (same being interstate business), and every sack that moved over his docks onto the ship, (same being foreign or interstate business), was affected by the undue preference granted Young, and he reaped an undue advantage therefrom.

The right of the interstate commission to control the matter would have been clear, as the opinion points out (p. 527) even if there had been no shipments involved except those originating at Galveston and going to points outside of Texas; for the moment a sack of meal went over the docks on the ship bound, say, for Liverpool or Boston, it was foreign commerce in the first case and interstate in the other, the practices concerning either of which the Interstate Commerce Commission could control.

An extract from the opinion, too, we believe, makes it clear that the court was not passing on the character of any particular shipments, as was done in the present case, but asserting its right to control practices of a railroad company in so far as they affected interstate and foreign commerce.

"The evidence establishes, appellants contend, that the transit of the cake and meal is absolutely ended at the leased premises at Galveston, and that it is 'a final point of concentration and manufacture, the cotton seed cake being there manufactured into meal and sacked for export.' But this does not distinguish between the meal and the cake, nor between the meal that is purchased at points outside of Texas and directly exported, from that

so purchased and manufactured on the wharves of the terminal company. Nor does it take account of the fact that the wharves were intended for shipping facilities, *a means of transition from land carriage to water carriage*. It is manifest, as we have said, that to make the wharves manufacturing or concentrating points for one shipper and not for all is to give that shipper a preference. And, being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission. In other words, the manufacture or concentration on the wharves of the terminal company are but incidents, under the circumstances presented by the record, in the trans-shipment of the products in export trade and their regulation is within the power of the Interstate Commerce Commission.

"To hold otherwise would be to regard, as the commission said, the substance of things and make evasions of the act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading or whether their initial point was Galveston or some other place in Texas. They were all destined for export and by their delivery to the Galveston, Harrisburg and San Antonio Railway they must be considered as having been delivered to a carrier for transportation to their foreign destination, the terminal company being a part of the railway for such purpose. The case, therefore, comes under *Coe vs. Errol*, 116 U. S., 517; where it is said that goods are in interstate, and necessarily as well in foreign, commerce when they have 'actually started in the course of transportation to another State, or delivered to a carrier for transportation.' In *G. C. & S. F. Ry. Co. vs. State of Texas*, 204 U. S., 403, the facts are different and the case is not apposite."

The last paragraph quoted above, on which opposing counsel rely so much, must be interpreted in the light of the real facts and what was actually decided. A *current* of interstate and foreign commerce was involved and affected.

We scarcely think it necessary to do more than counsel for plaintiffs in error themselves have done to distinguish the *Wood, Hagerbarth Cattle Company* case in

146 S. W., 538, decided by the Supreme Court of Texas from the case at bar. The extracts appearing in the brief for plaintiffs in error are, we believe, sufficient within themselves for that purpose.

For convenience of the court, however, we quote briefly in this connection from the opinion. The following is a partial statement of the facts appearing on page 539:

"In its findings of fact, the trial court found that T. S. Kingsbury was the authorized agent and representative of the defendant in error, and empowered to contract for it in respect to these shipments; that some time prior to June, 1906, he purchased for it certain cattle at Valentine, Texas, to be shipped from Valentine to Columbus, N. M., and from there to be driven across the border into Mexico to the ranch of the defendant in error; that with such shipment in view, after the purchase of the cattle, Kingsbury went to El Paso, and there personally arranged with the agents of the two railway companies named for their shipment from Valentine to Columbus, it being agreed by the companies between themselves and with Kingsbury that they would furnish 25 cars for the shipment of the cattle, and, as they were able to furnish only 25 cars at that time, the entire shipment would have to be made in such manner as to enable them to move each consignment from Valentine to Columbus, to be there unloaded, and return the same cars to Valentine, to be there reloaded, and so on until the entire shipment was completed; that it was the intention of Kingsbury, when he bought the cattle and when he shipped them, to ship them from Valentine, Texas, direct to Columbus, N. M.; that each consignment of the cattle was transported direct from Valentine to Columbus in a continuous, uninterrupted journey, and in the same cars in which they were loaded at Valentine, without being unloaded at any intermediate point; that E. H. Anthony, another agent and representative of the defendant in error, under Kingsbury's directions, accompanied each of the consignments from Valentine to Columbus, and, acting on Kingsbury's instructions, directed the conductor in charge of each of the trains of plaintiff in error to deliver the cars at El Paso to the connecting carrier, El Paso and Southwestern Railway,

for transportation over its line to Columbus." (Italics ours.)

In the course of the opinion in that case our Supreme Court undertakes to distinguish that case from the Texarkana grain case (204 U. S.; 97 Texas), and from T. & P. Ry. Co. vs. Aylor, 103 Texas, 367.

Referring to the former case the court said:

"This court held that the shipment from Texarkana to Goldthwaite was not an interstate shipment, for the reason that, although the intention of the Hardin Grain Company, when contracted to purchase the corn from the Harroun Commission Company, may have been as stated above," (that is, to ship the corn from Texarkana to Goldthwaite upon arrival at the latter point) "the destination of the corn, as fixed and determined by its consignors and then owners, when it started upon its journey, was, not Goldthwaite, but Texarkana; and when it reached that point the carriage so far was at an end."

The distinction between the Wood, Hagenbarth Cattle Company case and the T. & P. Ry. Co. case is thus stated:

"It is likewise clearly distinguishable from the case of Texas & Pacific Railway Company vs. Taylor, 103 Texas, 367; 126 W., 1118, 1200; for, in the opinion rendered by Judge Brown in that case, the holding that the shipment involved was intrastate was rested upon the fact that an actual delivery of the cattle was made to the shipper at El Paso, although they were finally shipped to a point without the State."

Both distinctions are applicable to the case at bar, because when the lumber left Ruliff its destination whether tested by the contract or by the intent of the shipper and the railroad, or either, was Sabine. Furthermore, there was an actual delivery of the lumber to the Powell Company at Sabine, just as there was a delivery of the cattle in the T. & P. Ry. Co. case, at El Paso; whereas in the Wood, Hagenbarth Cattle Co. case, the destination

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of the cattle when they left Valentine, Texas, was by the arrangement between the shipper and the railway company itself fixed as being Columbus, N. M., and there was never any delivery of the cattle in that case at El Paso, but they were shipped by a continuous final movement through El Paso to New Mexico.

We believe it may be of some assistance to the court to point out some of the important decisions of this court and the Interstate Commerce Commission, involving the question under discussion.

The leading case, first laying down clearly the distinctions and tests for which we contend is *Coe vs. Erroll*, 116 U. S., 517, which has been followed by numerous State and Federal decisions, including the *Texas grain case*.

That case involved the right of the State of New Hampshire to tax logs gathered from a point in New Hampshire and drawn down, the winter before, from there and placed in Clear Stream or on the banks thereof at the town of Erroll, New Hampshire, to be floated there down the Androscoggin River to the State of Maine, to be there manufactured and sold. While still at Erroll the logs were appraised and assessed for taxation. There were other logs differently situated, they being detained at Erroll by low water, while being floated from a point in Maine (where cut) via Erroll, New Hampshire, to Lewistown, Maine, for manufacture. A more detailed statement is not necessary here.

The court propounds the question before it thus:

"The question for us to consider, therefore, is whether the products of a State, (in this case timber cut in its forests), are liable to be taxed like other property within the State, though intended for exportation to another State, and partially prepared for that purpose by being

deposited at a place of shipment, such products being owned by persons residing in another State."

And thereupon says:

"Are the products of a State, though intended for exportation to another State, and partially prepared for that purpose by being deposited at a place or port of shipment within the State, liable to be taxed like other property within the State?"

"Do the owner's state of mind in relation to the goods, that is, his intent to export them, and his partial preparation to do so, exempt them from taxation? This is the precise question for solution.

"This question does not present the predicament of goods in course of transportation through a State, though detained for a time by low water or other causes of delay, as was the case of the logs cut in the State of Maine, the tax on which was abated by the Supreme Court of New Hampshire. Such goods are already in the course of commercial transportation, and are clearly under the protection of the Constitution. And so, we think, would the goods in question be when actually started in the course of transportation to another State, or delivered to a carrier for such transportation. There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the National law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their *final movement for transportation* from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an entreport for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation nor is exportation begun until they are committed to the *common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State.*" (Italics are ours.)

The following extract from the Errol case reiterates the rule:

"But no definite rule has been adopted with regard to the point of time at which the taxing power of the

State ceases as to goods exported to a foreign country or to another State. What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us to be a sound one on that subject, namely, that such goods do not cease to be a part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, *until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey.* We think that this must be the true rule on the subject. It seems to us untenable to hold that a crop or a herd is exempt from taxation merely because it is, by its owner, *intended for exportation.*" (Italics ours.)

Diamond Match Co. vs. Ontonagon, 188 U. S., 93.:

The Diamond Match Company case holds that timber cut by the Match Company from the forests in Michigan and floated down a stream in that State, to a point in that State, with the view and purpose on the part of the company of ultimately shipping the same from the point of collection to its sawmill in Illinois for manufacture, was not the subject of interstate commerce while being collected to, or while at the Michigan point, from which it was intended to be, and was ultimately, forwarded to Illinois.

Pennsylvania Ry. Co. vs. Knight, 192 U. S.:

The Pennsylvania case involved the question as to whether the cabs owned by the Pennsylvania Railway Company and operated in New York City were engaged in interstate commerce, while carrying from the various hotels in New York, passengers and their baggage to its 23rd Street station in New York; said passengers contemplating and intending an immediate trip across the Hudson River into New Jersey and other States, and actually purchasing, immediately upon arrival at said station pursuant to said purpose, tickets, and embarking upon such interstate trip with their baggage, first

on the ferry boat, then on the railway of said company. The Supreme Court, following the Erroll case, held that the cabs were not engaged in interstate commerce while thus employed.

But opposing counsel will argue that there is a distinction between interstate commerce and foreign commerce in regard to the tests, to be applied. Not so. Section 1 of the Act to Regulate Commerce, by its very terms requires the property to be "shipped" to a foreign destination, in order for an inland movement to become a part of foreign commerce. It is never so "shipped" to a foreign point till there is a contract or arrangement made to that effect, and the freight is launched on a final continuous journey to such destination.

There is no sound reason that can be urged why the test, *that a continuous final voyage to a fixed destination, under a shipment requiring and providing for that*, should not be applied in determining whether a movement wholly within a State is a part of a foreign movement, just as it is when we are endeavoring to determine whether such a movement, (one wholly in a State), is a part of an interstate movement.

Mr. Justice Brown, writing the opinion in the Houston Direct Navigation case, *supra*, though discussing a foreign shipment, (being a shipment from Houston to Liverpool), applied this test and in fact all the tests laid down in the Errol case. So evidently he understood the tests to be the same, in determining this question, whether the shipment be an interstate or foreign one.

At the very base of the argument of opposing counsel constituting the very corner stone of their contention, is the idea that, the *intention* of Powell Company to make an ultimate shipment to some point in Europe, coupled with the anticipation, or assumption, or, if you please, the inference reasonably amounting to knowledge, of the

Sabine Tram Company, that the Powell Company would ship it out of Sabine to some other port, in this or some other State or foreign country, fixed on the shipment from Ruliff to Sabine the character of foreign commerce. There is absolutely no other basis for their contention. If in error in this, the whole structure of their logic and argument falls to the ground.

Opposing their contention, we invoke the above decisions by the highest courts of the land. In addition, we call the attention of the court to an extract from Judson on Interstate Commerce, based upon the holdings of the Interstate Commerce Commissions, as follows:

"Sec. 14. The intention of interstate shipment is not sufficient. Transportation is not made interstate and subject to the jurisdiction of the commission by the intention of the shipper that when the shipment is delivered by the carrier in the same State it shall be further transported by another carrier into another State, 1 I. C. C. R. R. 30, and 1 Inter., 607. Thus, fruit, delivered to a consignee at Jersey City under rates made to Jersey City on traffic originating in New Jersey, though destined for the State of New York, is not interstate traffic, and the commission had no authority over such freight. 21 C. C. R. 142, and 2 Int. Com. Rep., 84."

An analysis of some of the decisions relied on by appellant may be of some assistance to the court.

Cosmopolitan Ship Company vs. Hamburg-American Packet Company, 13 I. C. Rep., 266:

The above case before the Interstate Commerce Commission involved an effort to have that commission take jurisdiction over the practices of certain trans-Atlantic steamship lines which had joined together in what was known as the "Baltic Pool," as regards shipments *on through bills of lading* from interior points in the United States, for example, Chicago, to the foreign points where the ship lines touched, upon the ground that the through bills established a "continuous carriage or ship-

ment" under "a common arrangement," as referred to in section 1 of the Act to Regulate Commerce, and thus rendered the entire through shipment subject to the control of the commission. The commission held that the act did not apply, and, therefore, it had no jurisdiction over ship lines, as regards the ocean part of the transportation to a non-adjacent foreign country; but only over the transportation from the interior points of this country to the seaboard; and that the "continuous carriage" and "common arrangement" clause did not apply to shipments partially by railroad and partially by water, when destined to points in a non-adjacent foreign country, so as to give jurisdiction.

Baer Bros. M. Co. vs. Missouri Pacific Ry. Co., 13 L. C. Rep.:

This case simply decides that where the Denver & Rio Grande Railroad, whose line is located entirely in the State of Colorado, performed a part of an interstate shipment of beer from St. Louis, Missouri, to Leadville, Colorado (receiving the beer at Pueblo, Colorado, from the Missouri Pacific Railway and carrying it thence to Leadville, under the original interstate bill of lading or shipping directions), it was subject, while performing such service, to the jurisdiction of the Interstate Commerce Commission, because the commerce in that case was interstate.

Cincinnati N. O. & T. P. Ry. Co. vs. Interstate Commerce Commission, 162 U. S., 184:

The above case is usually known as the "Social Circle" case. It involved a shipment under a *through bill of lading* from Cincinnati, Ohio, to Social Circle, Georgia, over three railroads, which were connecting carriers, and formed a continuous line from Cincinnati, Ohio, to Augusta, Georgia; Social Circle being an intermediate point between Atlanta and Augusta. The freight in question being a shipment of buggies, etc., moving un-

der a through bill issued by the originating road at Cincinnati, was received by the Georgia Railroad, a link in the through route, at Atlanta in the course of its continuous movement under the through bill. The three railroads published joint rates to Augusta, but the Georgia Railroad instructed the other two not to fix joint rates to intermediate points between Atlanta and Augusta, and sought to collect as its share of the shipment in question and others to intermediate points, the local or State rate from Atlanta to the intermediate points. However, it received this shipment from its connecting line at Atlanta, and moved it under the through bill of lading originally issued, and such was its usual course with respect to shipments moving over the three railroads from Cincinnati to points intermediate between Atlanta and Augusta. The commission held that by transporting the property in question from Cincinnati to Social Circle, under the through bill of lading, and its other arrangements for continuous carriage, the Georgia Railroad subjected itself to the jurisdiction of the commission, and such transportation by virtue of the original contract, (the bill originally issued by the originating road, constituted a "common arrangement for a continuous carriage or shipment" over several lines, within the meaning of the Act to Regulate Commerce.

The following extract from that opinion will show clearly the reason and the scope of the decision:

"All we wish to be understood to hold is that when goods shipped under a through bill of lading from a point in one State to a point in another are received in transit by a State common carrier under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the Act to Regulate Commerce."

Texas & Pacific Ry. Co. vs. Interstate Commerce Commission, 162 U. S., 197.

The above decision is frequently referred to as the Import Rate case, for the reason that it involved import shipments on through bills of lading from Liverpool and London to San Francisco and, therefore, brought up the question of the application of the Act to Regulate Commerce to imports. The Texas & Pacific Railway had been in the habit of charging a smaller proportionate rate on such imports for its part of the transportation from New Orleans, (through which port the imports passed), to San Francisco than it charged on similar goods shipped as interstate commerce from New Orleans to San Francisco. The railway company justified its action upon the ground that it was necessary for it to make a smaller charge on imports, because of ocean competition by way of Cape Horn, and the Isthmus of Panama on shipments of such goods from London and Liverpool to San Francisco. The railway company alleged, and the proof showed that such commerce would not come through the port of New Orleans unless the railroad company made such reduced rates. The Interstate Commerce Commission brought the Texas & Pacific Railroad before it and upon hearing, held that the Interstate Commerce Commission had no jurisdiction over the ocean part of the transportation, and, therefore, could not take into consideration the circumstances of ocean competition by way of the Horn and the Isthmus of Panama, in determining whether or not there was discrimination in favor of such commerce as against the inland commerce from New Orleans to San Francisco. However, on appeal from this decision, this court held that in determining the question of discrimination or not, it was the duty of the commission to look to all the circumstances surrounding the commerce, including the *circumstances of ocean competition*, and that the commission should also take into consideration the welfare of the railroad and the general public and the importers, as well as the interest of shippers of similar goods from New Orleans to San Francisco.

Of course this court said that while the commerce act could not apply to, and therefore, the Interstate Commerce Commission had no jurisdiction over the ocean part of the transportation, yet, under such through bills of lading, it did have jurisdiction over the inland part of such foreign commerce, because the through bill provided for a continuous movement from Liverpool, the origin, to San Francisco, the destination.

Re Tariffs on Export and Import Traffic, 10 I. C. C. Rep., 55:

In this case the contention was made that the Interstate Commerce Commission had no jurisdiction over any part of a foreign movement under a through bill of lading. It was held, of course, otherwise; that the inland part of an export or import shipment was subject to the jurisdiction of the commission; and that the rates applicable to such shipments must be published, showing, at the option of the railroad, either the inland part of the rate to the port, or the entire through rate.

Swift & Co. vs. United States, 196 U. S., 375:

This was a suit involving the application of the Sherman Anti-Trust Act, in which the United States Government sought to restrain a combination between various dealers in fresh meat, affecting directly interstate commerce in that article. The scope of the opinion is sufficiently indicated in the *syllabus*:

“A combination of a dominant proportion of the dealers in fresh meat throughout the United States, not to bid against, or only in conjunction with each other in order to regulate prices in and induce shipments to the live stock markets in other States, to restrict shipments, establish uniform rates of credit, make uniform and improper rates of cartage, and to get less than lawful rates from railroads to the exclusion of competitors with intent to monopolize commerce among the States, is an illegal combination within the meaning and prohibition of the Act of July 2, 1890, 26 Stat. 209, and can be restrained and enjoined in an action by the United States.

"It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States. Moreover the effect of such a combination upon interstate commerce is direct and not accidental, secondary or remote as in *United States vs. E. C. Knight Co.*, 156 U. S., 1.

"Even if the separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful.

"When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a constantly recurring course, it constitutes interstate commerce and the purchase of the cattle is an incident of such commerce."

We fail to find that this decision is in the least at variance with the later decision in the *Texarkana grain case* (204 U. S.). The combination referred to necessarily directly affected an immense volume of interstate commerce, and to that extent it was in violation of the Sherman Anti-Trust Act, and the right and power of the court to enjoin it in so far as it affected interstate commerce was not in the least affected by the fact that such combination may have likewise affected some State commerce, to which the Sherman act did not apply. (*Addyston & Co. vs. U. S.*, 175 U. S., 211).

The point is made that if a shipper is allowed to take out a local bill of lading and make a local shipment of goods that are intended to be sent ultimately beyond the State, it would give any shipper the power to thwart the power of the Interstate Commerce Commission to control foreign and interstate commerce. In reply to this we submit it is the shipper's clear right to offer his property for shipment to any destination he may choose which the carrier can reach on, or via its own and con-

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necting lines, and it is the carrier's duty to transport it thither, whether the destination named be in or out of the State where the shipment originates, or in the interior or at a port. Conversely, a carrier can neither choose, nor dictate the destination to which the shipper shall send his property. Thus the character of the shipment is always in that way and to that extent rightfully determined by the shipper's choice of the destination to which he chooses to send his property, being local or interstate or foreign according to whether he directs and contracts for a shipment to a destination within the State, or in another State, or in a foreign country. Therefore, it follows that the carrier has no more right to inquire into the intentions of the shipper, the consignee or their assigns as to the ultimate disposition of their freight when it is destined to a port town like Sabine and Galveston, than when destined to an interior point, say Dallas.

So, in no proper sense can it be said that the shipper has it in his power to nullify the commerce clause of the Constitution and the Acts of Congress in pursuance thereof; for when the shipper makes an interstate or foreign shipment they apply; when he makes an intrastate shipment, they do not apply; and were never intended to apply; and it must be conceded he has a right to make either he wants, or neither.

It is urged that the free time and wharfage privileges granted the lumber in question determine the character of the shipments made. We submit in reply to this contention that in the first place it is very doubtful whether any free time in excess of 48 hours was in fact allowed. The bills of lading and the freight (expense bills) provide that the lumber had to be removed at destination within 24 hours. But this is entirely aside from and foreign to the question under consideration,—as to what character of commerce the completed shipments from Buliff to Sabine were. If they were really local, they

were not transformed into foreign shipments by the circumstance that the Texas & New Orleans Railroad may have granted certain privileges to the freight because of the fact that Powell intended ultimately to export it; for the law would not change the real nature of the shipment made by the Sabine Tram Company because of some subsequent act by, or indulgence extended to the Powell Company.

Plaintiffs in error, in addition to their contention that the commerce under consideration was foreign, also contend and urge as their second specification of error, that they had the right to show upon proper pleading that the State rate of six and a half cents was confiscatory, and this is their second point. In reply to this, we submit:

That the court did not err in sustaining plaintiff's special exception to eighteenth paragraph in the answer of the Texas and New Orleans Railroad Company, defendant, seeking to inquire, in this action, which is between a private person and railways, into the reasonableness of the rates promulgated by the Railroad Commission of Texas, as to local shipments within its jurisdiction; for that the Legislature, in the proper exercise of its power to prescribe the remedy and procedure for the protection of rights and redress of wrongs by section 4 of the Railroad Commission Act (Acts 22nd Legislature, Ch. 51, Sec. 4, p. 58), provides for an investigation before the commission, a quasi-judicial body, after due notice to the railroad affected, before any rate is fixed, in which inquiry the railroad may be fully heard, (Art 4563 R. S.), and further protects the railroad, after the rate is fixed by sections six and seven of said acts (Art. 4565 and 4566 R. S.) which authorize any railroad company, desiring to complain of any rates, charges, orders, rules, regulations or classification thus prescribed by the commission to contest the same in a direct suit brought "in any court of competent jurisdiction in Travis County,

Texas," for that purpose, in which the railroad can by all appropriate remedies seek redress; further providing by section five of said act, that such questions cannot be raised collaterally in a suit brought under the act between a private party and a railroad company, in which character of proceeding it is provided that "the rates, charges, orders, rules, regulations and classifications prescribed by the commission, before the institution of such action, shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controlled therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections six and seven" of said act. Such remedy and procedure provide for a judicial inquiry in a reasonable way and are adapted to the end to be attained; and therefore constitute "due process of law;" and the courts will not inquire into the question as to whether or not such procedure affords the best and most expedient remedy, that being a question within the legislative discretion.

The pertinent Texas statutes on the subject are as follows:

"Art. 4563. Before any rates shall be established under this chapter, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

"1. *May fix rules for all investigations.* The commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it by law; provided, no person desiring to be present at any such investigation shall be denied admission.

"2. *May administer oaths, etc.* The chairman and each of the commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses and the production of papers, way-bills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district or county court." (Acts 1891, 22nd Legislature, sec. 4, p. 58).

"Article 4564. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally of witnesses and the production of papers, way-bills, found otherwise in a direct action brought for that purpose in the manner prescribed by articles 4565 and 4566 of this chapter." (Ib. Sec. 5).

"Art. 4565. If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil cases in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice." (Ib. sec. 6).

"Art. 4566. In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the

rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them." (Ib. sec. 7).

It is clearly established by the authorities that if the Legislature has provided a remedy and procedure which afford redress, and are, in view of all the circumstances, adapted to the end in view (whether they be the best, most effectual and expedient procedure and remedy or not), and are not so hampered and unreasonable as to amount to a deprivation of a remedy, there is no taking of property "without due process of law" in violation of the Fourteenth amendment.

AUTHORITIES.

Arts. 4563 to 4567, R. S. Texas.

Davidson vs. New Orleans, 96 U. S., 97, 102, 105.

Hagar vs. Reclamation District No. 108, 111 U. S., 701-708.

Turpin vs. Lemon, 187 U. S., 58.

Reagan vs. Farmers Loan & Trust Co., 154 U. S., 391.

Smyth vs. Ames, 169 U. S., 526.

Maxwell vs. Dow, 176 U. S., 581.

Marvin vs. Trout, 199 U. S., 212.

Cunnius vs. Reading School Dist. No. 198, 198 U. S., 458.

The procedure prescribed by sections 4 to 7 of the Act of the Twenty-second Legislature, quoted above, not only do not deprive a railway company desiring to complain of a rate or order, of a remedy or of property "without due process of law," but on the contrary, it is reasonably and effectually adapted to the ends, and the

only character of procedure that would not put the vast majority of shippers of ordinary means at the mercy of the powerful railroads.

We respectfully urge that there is no error in the judgment of the Court of Civil Appeals of the First Supreme Judicial District of Texas, and that therefore the same should be affirmed.

Respectfully submitted.

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